NEW MEXICO LEGISLATURE

INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

2017 INTERIM FINAL REPORT

Legislative Council Service
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INTERIM SUMMARY

Investments and Pensions Oversight Committee
2017 Interim Summary

The Investments and Pensions Oversight Committee met five times during the 2017 interim. During its meetings, the committee heard routine updates from the state's primary investing agencies — the Educational Retirement Board, the Public Employees Retirement Association and the State Investment Council — on, among other topics, those agencies' programs, organizational structures, strategic goals, fiscal health, fee management and transparency. The Retiree Health Care Authority and the Education Trust Board also presented in several of those topic areas, and the State Investment Council gave its annual report on the council's private equity and other economically targeted investments programs.

The committee returned to some issues that have emerged among states recently and that were explored in past interims. Namely, it revisited the topics of private-sector retirement insecurity and the implementation of recent Governmental Accounting Standards Board statements affecting pension-administering agencies. Concerning the former topic, it heard an update from the state's Retirement Income Security Task Force, which formed in 2017 to evaluate options for, and make recommendations on, improving private-sector workers' financial security in retirement.

New this interim, the committee heard presentations from: the state land commissioner on revenue generated from state lands for investment by the State Investment Council; a representative of the investment consulting industry on key concepts in managing large public fund investment programs; the managing general partner of a venture capital company on expanding entrepreneurship through state investments; and the Public Employees Retirement Association on bolstering investment returns by instituting a program of staff compensation tied to investment performance.

At its final meeting, the committee endorsed a legislative measure brought forth by the Educational Retirement Board. If enacted, the measure would exempt from public disclosure certain information concerning public security. Specifically, it would protect from exposure under the Open Meetings Act and the Inspection of Public Records Act information about state agencies' efforts to implement cyber-security safeguards.

WORK PLAN AND MEETING SCHEDULE

2017 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 June 5, 2017. Committee members are as follows:

Members

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

Advisory Members

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

Work Plan

During the 2017 interim, the IPOC will:

(1) receive reports from the Public Employees Retirement Association (PERA), the Educational Retirement Board (ERB) and the Retiree Health Care Authority (RHCA) on each agency's 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 impediments to sustainability and solvency, including cost-of-living adjustments (COLAs) to pension payment levels;

(2) receive reports from the PERA and the ERB on the effects that potential changes to COLA policies would have on pension fund solvency;

(3) receive reports from the PERA and the ERB on the effects that recent, temporary changes to employee and employer contribution rates had on pension fund solvency;

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

- policies and controls, including:
  - asset allocation policies and the implementation of those 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 other investment-related expenses, if any; and
- audited financial statements and board and committee meeting minutes posted on each agency's website;

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

- economic impact; and
- comparison to peers;

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

- plans and actions; and
- troubleshooting impediments, if any, to meeting goals;

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

(8) 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 state's economic development;

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

(10) receive reports on options and the process for implementing a retirement savings vehicle for private-sector employees having limited or no access to a retirement savings arrangement at work and on efforts by the state treasurer to convene a task force to identify those options and that process;

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

(12) receive reports from the SIC, the PERA, the ERB, the RHCA and the ETB on each agency's staff and salary structure;

(13) receive reports from the State Land Office on revenue generated from state lands and reports on the distribution of revenue from the Land Grant Permanent Fund to the fund's beneficiaries;

(14) receive reports on legislation related to the investment of public funds and the administration of pension programs; and

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

Investments and Pensions Oversight Committee
2017 Approved Meeting Schedule

Date	Location
June 20	Santa Fe
August 3	Santa Fe
September 7	Santa Fe
October 19	Santa Fe
November 13	Santa Fe

AGENDAS AND MINUTES

Revised: June 14, 2017

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

June 20, 2017
State Capitol, Room 307
Santa Fe

Tuesday, June 20

10:00 a.m.		**Call to Order** —Representative Tomás E. Salazar, Chair —Senator George K. Munoz, Vice Chair
10:05 a.m.	(1)	**Update from the Public Employees Retirement Association (PERA)** —Wayne Propst, Executive Director, PERA —Jude Pérez, Interim Chief Investment Officer, PERA
10:35 a.m.	(2)	**Update from the State Investment Council (SIC)** —Steven K. Moise, State Investment Officer, SIC —Vince Smith, Deputy State Investment Officer, SIC
11:05 a.m.	(3)	**Update from the Educational Retirement Board (ERB)** —Jan Goodwin, Executive Director, ERB —Bob Jacksha, Chief Investment Officer, ERB
11:35 a.m.	(4)	**Update from the Retiree Health Care Authority (RHCA)** —David Archuleta, Executive Director, RHCA
12:05 p.m.	(5)	**2017 Interim Work Plan and Meeting Schedule** —Tessa Ryan, Staff Attorney, Legislative Council Service
12:20 p.m.		**Adjourn**

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

June 20, 2017
State Capitol, Room 307
Santa Fe

The first meeting of the Investments and Pensions Oversight Committee was called to order by Representative Tomás E. Salazar, chair, on June 20, 2017 at 10:05 a.m. in Room 307 of the State Capitol.

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

Advisory Members

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

Staff
Tessa Ryan, Staff Attorney, Legislative Council Service (LCS)
Kathleen Dexter, 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.

Tuesday, June 20

Welcome

Representative Salazar welcomed the committee and audience members to the new interim, noting that the committee's strong experience will serve it well as it addresses the challenges faced by the state's public employee retirement funds and pension programs.

Update from the Public Employees Retirement Association (PERA)

Wayne Propst, executive director, PERA, and Jude Pérez, interim chief investment officer, PERA, presented the committee with a review of the funds managed and programs administered by the PERA.

Mr. Pérez reported that PERA programs currently serve more than 76,000 active members and more than 40,000 retired members. In fiscal year (FY) 2016, PERA benefit payments exceeded $1 billion for the first time, and more than 92 percent of that total was paid to retirees who live in New Mexico.

The funds managed by the PERA — commonly referred to in the collective as "the PERA Fund" and referred to in that manner for the purposes of these minutes — reached a high mark of $14.9 billion in April 2017, with the balance two months later reaching $15.1 billion. As of the end of April, year-to-date returns on the PERA Fund came to 9.24 percent after fees, up slightly from the fund's overall performance of 9.04 percent since its inception in 1985.

The PERA is in the process of shifting percentages within the PERA Fund's asset allocations. The four broad investment categories will remain the same: 1) global equity, for economic growth; 2) risk reduction/mitigation, for safety and liquidity; 3) credit-oriented investments, for hybrid exposure to growth and income; and 4) real assets, for inflation protection. However, the percentage of the fund allocated to each investment category has been revised in the past year, with the new structure providing a more defensive investment approach aimed at reducing volatility in the fund. The asset allocation transition that began in July 2016 should be complete by September 2017.

Major initiatives under way at the PERA include:

- upgrades to its Retirement Information Online system, or "RIO";
- long-term pension solvency education for the PERA board to broaden the focus beyond investments and include a better understanding of and planning for liabilities; and
- a survey of PERA members aimed at improving services, with results from the survey to be presented to the committee later in the interim.

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

PERA Fund solvency and performance. The goal for the PERA Fund is to be 100 percent solvent by 2043, but projections show it falling short. While public pension plans generally use a 30-year amortization period for liabilities, the PERA is using a 55-year period because: 1) it has recently lowered its investment return assumption for the next 10 years from 7.75 percent to 7.25 percent; and 2) returns in the last two years have been lower than initially projected. The PERA Fund dropped nearly 30 percent following the 2008 economic downturn and has underperformed since that time, leaving New Mexico with less equity in its retirement investment portfolio compared with other states.

Fees. Fees deducted from portfolio returns in calendar year 2016 came to 36 basis points, or $89 million, and covered administration, consultant, management and performance fees. When the portfolio performance does not meet its goal, the manager's fee is reduced. Overall fees for the PERA Fund have been reduced by 22 percent in recent years.

Pension plan stability. The judicial and magistrate plans are falling short of their solvency goals, and while they are not insolvent, they were 62 percent funded at the end of FY 2016 and are continuing a downward trajectory. The state general and municipal fire plans currently range from 65 percent to 70 percent funded and are projected to decline to 35.8 percent and 40.6 percent, respectively, by 2043. Some plans are doing well: by 2043, the municipal general and municipal police plans are projected to be nearly 100 percent funded, and the state police and adult correctional officer plans will be nearly 270 percent funded.

Chief investment officer. Interviews are in process for the chief investment officer position, which has been open since Jon Grabel left to serve as investment officer for Los Angeles County. A final candidate will be selected by the end of July.

Pension payments' economic effect. The U.S. Bureau of Economic Analysis estimates that PERA retirement benefit payments account for 1.07 percent of New Mexico's overall economy.

- Mr. Propst and Mr. Pérez offered to:
  (1) make a presentation to the committee later in the interim on the results of the PERA member survey; and
  (2) report to the committee in August or September on the PERA's pension plan liabilities and ways to address them.

- Senator Munoz requested that the PERA provide modeling on cost-of-living-adjustment (COLA) reductions, especially in the magistrate and judicial retirement plans.

- Representative Garcia requested county-level data that show PERA benefits as a percentage of each county's per capita gross domestic product.

Update from the State Investment Council (SIC)

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

The SIC currently manages $22.18 billion in assets. These include the land grant, severance tax, tobacco settlement and water trust permanent funds, as well as funds under the control of state agencies, local governments and affiliated entities such as university foundations. Investments are divided among fixed-income investments (23.7 percent), private market investments (31 percent) and public equity investments (45.3 percent). In a move to create a stronger and more stable income for the portfolio, the SIC has recently restructured investment allocations to steer away from the stock market and into less volatile real assets.

Distributions from the state's permanent funds into the General Fund have increased from nearly $300 million to nearly $900 million in the past two decades, and they currently account for up to 15 percent of the state's annual budget. The annual tax savings attributed to distributions from all permanent funds total about $450 per New Mexico resident, or $1,100 per household.

The bulk of the distributions come from the Land Grant Permanent Fund and the Severance Tax Permanent Fund, with distributions from the former earmarked in their entirety and distributions from the latter available for expenditure by the legislature. Eighty-five percent of the Land Grant Permanent Fund distribution currently goes to public schools, while the remainder is split among higher education institutions; constitutionally established special schools and institutions; public buildings; prisons; hospitals; and reservoirs.

Investment returns on both the Land Grant Permanent Fund and Severance Tax Permanent Fund exceeded their long-term targets in the past year and over the past five years; however, returns measured at the three-year and 10-year marks show the funds below their targets due to market conditions during those periods. Returns over the coming decade are projected to be below the target as well.

On questioning, the presenters and committee members addressed the following topics. They were joined by Charles Wollmann, director of communications, SIC, and Brent Shipp, chief financial officer, SIC, both of whom spoke from the audience on invitation of the chair.

Land Grant Permanent Fund beneficiaries. Each beneficiary receives a distribution tied to revenue generated by state lands. While the distributions are governed by that act, the use of the money is not; it is left to the discretion of each beneficiary.

Carrie Tingley Hospital was added to the list of beneficiaries by way of a land swap that took place while Patrick Lyons was commissioner of public lands.

A committee member suggested that the distribution to the Miners' Colfax Medical Center be adjusted now that there is no longer any mining in Colfax County.

Peer ranking of investment portfolios. New Mexico's portfolio ranking against other states is ahead of the median performance; however, this ranking falls to slightly below the median if a different set of data is used for comparison. In such peer rankings, short-term performance measures are greatly affected by temporary deviations and, thus, prove to be less valuable than long-term measures. The SIC is focused on the long term.

Investment strategy. Unlike investment entities in most other states, the SIC makes its investment strategy available to the public on its website. The website includes information on growth patterns from high-risk investments versus conservative investments, as well as the range of risk included in the SIC's investment strategy. Fees are enumerated on the website as well.

- Mr. Wollmann will provide information on how the Land Grant Permanent Fund distributions are used for the New Mexico Behavioral Health Institute at Las Vegas and for "saline lands".

Update from the Educational Retirement Board (ERB)

Jan Goodwin, executive director, ERB, and Bob Jacksha, chief investment officer, ERB, presented an overview of the ERB's membership and services, a status report on its investment portfolio and an overview of ERB-related legislation in the 2017 regular session.

As of the end of FY 2016, the ERB had just over 60,000 active members and nearly 46,000 retirees and beneficiaries, with membership remaining essentially flat for the past several years. Retirement benefits paid out in FY 2016 totaled $973.7 million, while contributions from active members and participating employers for the same period came to $693 million. The difference was covered by earnings on the ERB's portfolio, which totaled $11.5 billion at the end of FY 2016 and has grown since that time to more than $12 billion.

After deducting manager fees, the portfolio showed returns as of March 31, 2017 that range from 8.9 percent (fiscal year to date) to 5.4 percent (10 years), with the 30-year return rate at 8.7 percent. A month later, fiscal-year-to-date returns rose to 10.3 percent, while 10-year returns fell to 5.2 percent. The ERB's target for returns was 7.75 percent until April of this year, at which time it was reduced to 7.25 percent.

Senate Bill 28 from the 2017 regular legislative session, which passed both chambers and was signed into law, made "cleanup" and clarification changes to statutes regarding ERB provisional membership and disability benefits. Senate Bill 29, which did not receive a hearing in committee, would have revised the ERB director's authority to hire and set salaries for staff and would have required that salary classifications and ranges be modeled on those used for governor-exempt employees. Senate Bill 2, which passed both chambers but was vetoed by the governor, would have required that the ERB and certain other state agencies provide additional financial information to the state auditor.

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

COLAs. The COLA applied to ERB retirement benefits is based on the Consumer Price Index (CPI): if the CPI increases, the subsequent year's COLA is calculated at 50 percent of the change in the CPI over the previous year. The COLA is currently reduced, rather than suspended, until the ERB plan is 100 percent funded. The reduction was made on a sliding scale based on a retiree's years of service and benefits total. Retirees who receive disability benefits had no COLA reduction.

Unfunded liabilities. The ERB's current unfunded liability is approximately $7.4 billion. Some of this shortfall can be attributed to market forces; however, the primary cause is a decrease in the number of active members making contributions, and this is due to shrinking employment in public and higher education. To address the shortfall, the ERB has shifted to using generational mortality assumptions, which are conservative. Another measure to address the shortfall — adjusting contribution rates — could only be taken by the legislature because the rates are set by statute.

Revisions to Governmental Accounting Standards Board (GASB) Statement 68 require a new calculation of unfunded liabilities, which must now be apportioned to each participating employer's balance sheet and paid down through contributions.

- Representative Garcia requested county-level data that show ERB benefits as a percentage of each county's gross domestic product. Ms. Goodwin noted that the ERB has tried to get this information from the Bureau of Business and Economic Research at the University of New Mexico in the past, but the bureau does not have county gross domestic product data.

Update from the Retiree Health Care Authority (RHCA)

David Archuleta, executive director, RHCA, gave an update on the system that provides comprehensive core group health insurance to retired public employees.

Mr. Archuleta reported that approximately 10 percent of the adult population of New Mexico are RHCA members — nearly 100,000 enrolled active employees and about 61,000 participating retirees and eligible dependents. He cited 2016 findings projecting that a couple who retires at age 65 can expect to incur $260,000 of medical expenses during retirement — a significant burden given that the average monthly pension from public retirement plans ranges from $1,800 to $2,400.

The RHCA FY 2018 operating budget is $323 million. Of that amount, less than one percent is used for administrative expenses, and the balance is paid out in health care benefits. Retiree premiums and active employee contributions account for just over 84 percent of the RHCA's revenue, while the balance comes from miscellaneous revenue sources, such as interest, and a distribution from the Tax Administration Suspense Fund. Senate Bill 7 from the 2016 special session reduced that distribution, and as a result, the RHCA plan's solvency projection has been extended by two years, to 2032. Unaffected by the reduction, however, the trust fund underlying the RHCA continues to grow, with its balance currently over $550 million.

Like the ERB, the RHCA will be affected by recent changes to GASB standards. Unfunded liabilities for the plan will increase under the new reporting requirements, and participating employers will report the liabilities on their financial statements.

The RHCA is currently developing its strategic plan for 2018 through 2022 and expects to finalize the plan by November of this year. Elements of the plan address self-insured costs; subsidy levels; wellness and population health programs; value-based purchasing initiatives; demographic trends; and contribution increases. The RHCA is also looking into establishing a minimum retirement age.

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

Medicare. RHCA members who qualify for Medicare are offered the option of enrolling in the Medicare supplement plan.

Pharmacy benefits management. The RHCA will issue a request for proposals for pharmacy benefits management in August to cover the period from July 1, 2018 to June 30, 2022. Companies bidding to provide these services to state entities are required to include local pharmacies in their proposals.

Competition from other health plans. Some retirees have chosen not to participate in the RHCA because they have gotten less expensive health coverage elsewhere. Increases in contribution rates must be weighed against possible enrollment losses.

2017 Interim Work Plan and Meeting Schedule

Ms. Ryan presented a proposed work plan and meeting schedule for the 2017 interim for the committee's consideration. A copy of the work plan may be found in the meeting file.

On a motion duly made, seconded and unanimously adopted, the committee approved the work plan with the following additions:

(1) a presentation on the use of Land Grant Permanent Fund distributions by the beneficiaries;

(2) a presentation of COLA adjustment modeling on all funds; and

(3) a presentation on the effects of recent, temporary changes to employee and employer contribution rates on pension fund solvency.

Adjournment

There being no further business, the committee adjourned at 12:40 p.m.

Revised: July 28, 2017

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

August 3, 2017
State Capitol, Room 307
Santa Fe

Thursday, August 3

9:00 a.m.		**Call to Order and Welcome** —Representative Tomás E. Salazar, Chair —Senator George K. Munoz, Vice Chair
9:05 a.m.	(1)	**State Investment Council (SIC): Strategic Goals; Staff and Salary Structure** —Steven K. Moise, State Investment Officer, SIC —Vince Smith, Deputy State Investment Officer, SIC
10:05 a.m.	(2)	**Public Pensions: Overview of Key Terms and Concepts** —Jan Goodwin, Executive Director, Educational Retirement Board (ERB)
10:50 a.m.	(3)	**ERB: Strategic Goals; Staff and Salary Structure** —Jan Goodwin, Executive Director, ERB —Bob Jacksha, Chief Investment Officer, ERB
11:50 a.m.		**Approval of Minutes from the June Meeting**
11:55 a.m.		**Lunch**
1:00 p.m.	(4)	**Update from the Education Trust Board (ETB): Transparency; Value; Strategic Goals; Staff and Salary Structure** —Theodore Miller, Executive Director, ETB —Dr. Barbara Damron, Secretary, Higher Education Department; Chair, ETB
2:15 p.m.	(5)	**Public Employees Retirement Association (PERA): Strategic Goals; Staff and Salary Structure** —Wayne Propst, Executive Director, PERA

3:15 p.m. (6) **Report on the Deferred Compensation Plan Administered by the PERA**
—Wayne Propst, Executive Director, PERA
—Karyn Lujan, Deferred Compensation Plan Manager, PERA

4:00 p.m. (7) **Retiree Health Care Authority (RHCA): Strategic Goals; Staff and Salary Structure**
—David Archuleta, Executive Director, RHCA

5:00 p.m. **Adjourn**

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

August 3, 2017
State Capitol, Room 307
Santa Fe

The second meeting of the Investments and Pensions Oversight Committee was called to order by Representative Tomás E. Salazar, chair, on August 3, 2017 at 9:00 a.m. in Room 307 of the State Capitol.

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

Absent
Sen. George K. Munoz, Vice Chair
Sen. Gay G. Kernan
Sen. Steven P. Neville

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

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

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

Guests
The guest list is in the meeting file.

Handouts
Handouts and other written testimony are in the meeting file.

Thursday, August 3

State Investment Council (SIC): Strategic Goals; Staff and Salary Structure

Steven K. Moise, state investment officer, SIC, Vince Smith, deputy state investment officer, SIC, and Charles Wollmann, director of communications, SIC, gave a presentation on the value of SIC-managed funds as of the end of fiscal year (FY) 2017 and the SIC's strategic goals in managing those funds. They also reviewed the SIC's agency staff and salary structure.

Funds in the SIC's portfolio ended FY 2017 with the following balances:

- Land Grant Permanent Fund (LGPF): $16.27 billion, a year-over-year increase of $1.59 billion;
- Severance Tax Permanent Fund (STPF): $4.91 billion, a year-over-year increase of $346 million;
- Tobacco Settlement Permanent Fund (TSPF): $147 million, a year-over-year decrease of $72.6 million;
- Water Trust Fund: $45 million, a year-over-year increase of $512,000; and
- funds managed for governmental clients: $966 million, a year-over-year increase of $156 million.

The SIC's mission, developed seven years ago by its staff, is "to protect and grow the state's permanent endowment funds for current and future generations, through prudent, professional investment management". The core values of its mission are accountability, excellence, integrity, pride and respect. Its vision "to become one of the best performing, most respected sovereign wealth funds worldwide" is already somewhat fulfilled: among the dozen sovereign wealth funds in the nation, New Mexico's portfolio ranks third, behind only the funds in Alaska and Texas.

The SIC has 31 full-time positions, five of which are currently vacant. Most SIC staff are paid more than the midpoint for the salary ranges associated with their positions — in one case, 41 percent more. Mr. Moise noted that higher salaries are necessary in order to recruit qualified people.

The SIC first developed its long-term strategic plan in 2013 and updates it every five years, with annual reviews of its implementation. At least every three years, the SIC conducts a fund asset allocation study, including a review of peer funds and their asset allocations. The SIC will review the most recent asset allocation study, as well as its annual investment plan, at its meeting this month. Other reporting compiled for the SIC's review includes an annual memorandum on accomplishments and goals, monthly "budget-to-actual" reports and monthly reports on investment holdings.

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

Fund distributions and earnings. Eighty-five percent of the distribution from the LGPF goes to public schools. For FY 2018, this comes to nearly $900 million, an increase of approximately $50 million over FY 2017. A one-half percent increase in distributions from the fund to public schools would benefit the schools in the short term but might harm them in the long term if distributions shrink as the fund corpus shrinks.

The current distributions of five percent for the LGPF and four percent for the STPF are considered prudent.

The STPF earned $300 million in FY 2017, and all but $32.00 of the earnings was spent.

Investments and returns. The SIC did not have a structure in place for vetting investments during the previous state investment officer's tenure, but it does have such a structure in place now. All investments — in-state and out-of-state — undergo the same vetting.

The SIC forecasts a 5.5 percent rate of return on investments over the next seven to 10 years, which is down from returns seen in recent years. While 5.5 percent is the median rate of return for public funds, the SIC's long-term goal is seven percent.

Statute allows for nine percent of STPF investments to be made in New Mexico private equity. Currently, $400 million, or six percent, is invested in New Mexico; some investment consultants feel that five percent would be ideal. One challenge is finding New Mexico investments that will produce a good return. A member voiced concerns that the SIC's goal is to grow the largest permanent fund in the nation, not use the asset to improve conditions in the state.

Tobacco settlement funds. The TSPF balance decreased over the last year because money was pulled out to balance the state budget. While it is designated as a "permanent" fund, it has not been able to grow into a true permanent fund because it has been used several times since its creation to balance the budget.

It is the legislature's decision whether to "pay back" to the fund if state finances improve. Use of the funds is also up to the legislature; there are no constitutional limits imposed.

In 2013, tobacco companies sued New Mexico over its compliance with the Master Settlement Agreement and clawed back some of the funds paid to the state in 2003; however, the Office of the Attorney General (AGO) was successful on appeal of the 2013 ruling and recovered some of those funds. Tobacco companies continue to file challenges to payments they made in other years; the AGO expects clawbacks to increase and annual payments to decrease.

Strategic plan. Seventy-nine of the 82 improvements suggested by Hewitt EnnisKnupp are included in the strategic plan. Some improvements require legislative or executive action.

Water Trust Fund. The fund was created in 2006 and started with $1 million. It has not received any new funding since 2007.

- Mr. Smith agreed to provide:
  (1) information on the rate of return on "economic-driven" investments — those aimed at economic development in New Mexico rather than aimed at the highest yield — as well as the number of jobs created by those investments;
  (2) information on the decision to reduce the percentage of investment in New Mexico private equities from nine percent to six percent; and
  (3) a chart showing investment returns for the SIC portfolio.

Public Pensions: Overview of Key Terms and Concepts

Jan Goodwin, executive director, Educational Retirement Board (ERB), presented a handout that explained actuarial terms and suggested that members bring any questions they might have on the terms to the September meeting.

ERB: Strategic Goals; Staff and Salary Structure

Ms. Goodwin, who was joined by Bob Jacksha, chief investment officer, ERB, reported on the ERB's mission, goals and staff.

The ERB's mission is "providing secure retirement benefits for New Mexico's educational employees past, present and future" and its vision is "to be an effective and trusted manager of New Mexico's education retirement system". The values core to its mission are innovation, integrity, quality, respect, service, stewardship and transparency.

The ERB's four main goals center on improving and maintaining the ERB fund's financial condition; improving the quality of service to members and employers; identifying and controlling risk agency-wide; and building strong, collaborative relationships with all stakeholders. The presenters noted several challenges they face in meeting these goals:

- the fund's financial condition is negatively affected by the state's economy;
- staffing and salaries are insufficient;
- active membership is declining;
- the ERB needs a new building that can house the entire agency in one location;
- cybersecurity threats are increasing; and
- actuarial issues are complex and difficult to explain.

Ms. Goodwin presented a chart showing the ERB's staff structure and salaries. She noted that, according to a national survey conducted in 2015, most of the salaries paid to employees in the ERB's investment division are below the median for personnel working with public funds. Attracting and retaining qualified staff at current salary ranges have been significant challenges.

The ERB manages much of its portfolio internally rather than using outside investment managers. The ERB-managed investments have outperformed indexed funds, and the internal management has resulted in substantial savings on fees. The ERB also saves on fees by creating co-investment accounts in private equity, real estate, natural resources and infrastructure. The total annual savings from these strategies come to $24.5 million, with an additional $1.5 million in annual savings projected as more assets are brought in-house.

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

ERB building. The ERB requested $7 million for either purchasing land and constructing a building or purchasing and renovating a building. The appropriation would not have come from the General Fund or from severance tax bonds, but from the ERB trust, which currently totals $12.3 billion. The request was made both at a capital request committee meeting and in meetings with Legislative Finance Committee staff but was denied without explanation.

The old Public Employees Retirement Association (PERA) building does not have enough open space to accommodate the ERB. The building on Pacheco Street that once housed the Public Service Company of New Mexico might have worked but may no longer be available. The ERB is considering all location possibilities, including the area where the PERA has its offices.

Investments and returns. The rate of return on the ERB portfolio is currently 12 percent after fees; since its inception in 1983, the average rate of return is 9.1 percent. Seventy percent of the portfolio is in active management.

Employee recruitment. If the ERB recruits someone who is out of work, it checks to see why the person is unemployed and what the circumstances were when the person left his or her previous employment.

Representative Salazar suggested that committee members review House State Government, Indian and Veterans Affairs Committee Substitute for House Bill 58 (Laws 2017, Chapter 137), which makes changes to the agency rulemaking process and requires that proposed new rules be distributed to the appropriate interim or standing committees. Rod Ventura, general counsel, ERB, who spoke from the audience on invitation of the chair, explained the changes made to the Educational Retirement Act in Senate Bill 28 (Laws 2017, Chapter 21). In addition to making "cleanup" changes to the act, the bill clarifies requirements for provisional ERB membership and establishes requirements for disability determinations. Mr. Ventura noted that the ERB will hold a public hearing on August 25, 2017 regarding proposed changes to how protest hearings are conducted.

- Ms. Goodwin agreed to provide information on:
  (1) student populations since 2000 to track with the decline in active ERB membership; and

(2) vacancy rates in universities and public schools.

- Senator Candelaria requested a "dashboard" of the ERB fund, PERA fund and LGPF, broken down by asset class and investment strategy, that shows:
  (1) active versus passive management;
  (2) returns; and
  (3) fees.

Minutes

On a motion duly made, seconded and unanimously adopted, the minutes from the June 20, 2017 meeting were approved.

Update from the Education Trust Board (ETB): Transparency; Value; Strategic Goals; Staff and Salary Structure

Barbara Damron, Ph.D., secretary of higher education, and chair, ETB; and Ted Miller, J.D., executive director, ETB, reported on the ETB's structure and its work administering "529" college savings programs.

The ETB's mission is "to make post-secondary education more attainable by offering a flexible, low-cost, tax-efficient way to save for the costs of higher education". Its vision is "to enable as many New Mexico children as possible to become beneficiaries of 529 college savings accounts before age 10, and to promote continued contributions to the accounts until post-secondary education is complete". Goals for the board include increasing the number of new account owners in the state every year; being recognized as a top-rated 529 program; and becoming one of the top 15 college savings programs in the country by the end of FY 2020.

The five-member board includes the secretary of higher education, two members appointed by the governor and two members appointed by legislative leadership. The ETB's expenses — salaries for two employees and fees for various professional services — are covered entirely by fees paid by program participants. In addition, the program's marketing budget is supplemented annually with $650,000 from the program manager, currently Oppenheimer Funds.

As of June 30, 2017, there were 20,919 New Mexico resident accounts in the 529 program, for a total of more than $406 million. The average account size for New Mexico participants is $19,427. The program is open to non-residents as well, and accounts opened by out-of-state participants make up 83 percent of the ETB's managed assets. ETB assets totaled $2.437 billion as of June 30, 2017, ranking New Mexico's program twenty-sixth among the 49 states that have 529 college savings programs.

There are two plans available through the ETB: 1) The Education Plan, which is sold directly through the ETB and makes up 22 percent of ETB assets; and 2) Scholar's Edge 529, which is sold through Oppenheimer Funds and makes up 78 percent of ETB assets. ETB marketing efforts include improvements to its website; a billboard advertising campaign;

outreach to employers that have not yet implemented 529 account payroll deductions; and attendance and sponsorship at events such as the state spelling bee, the National Honor Society and Junior Honor Society state summit, KidFest and the Roswell UFO Festival. Increased and improved marketing and outreach efforts, both online and in the community, are planned for FY 2018.

The presenters noted certain impediments they face in managing the 529 program and urged the committee to consider statutory changes to remedy the situation, including:

- providing the ETB with the same exemption from the Procurement Code given to the ERB, the PERA, the SIC and the New Mexico Finance Authority; and
- providing explicit authority to create grant programs.

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

Professional services contracts. The ETB's public relations contract and marketing contract are with separate firms.

Financial literacy. The ETB plans to offer a financial literacy program for students and parents, possibly in conjunction with the National Honor Society.

Withdrawing money from an account. If a student does not need the money that a parent has invested in a 529 account, the parent can transfer the money to another 529 account for another child or leave the funds in the account for future education expenses. If money is removed for a purpose other than education, the parent pays a 10 percent penalty and pays taxes on the withdrawn amount. Very little of the money in the ETB 529 program is withdrawn for non-educational use.

Grant program. The AGO is reviewing the ETB's proposal for a pilot 529 grant program that would increase the number of New Mexico residents who open 529 accounts and be funded from the Program Administration Fund. The ETB has established a private foundation that will be able to receive donations for the grant program, including land donations.

Plan elements. The ETB is working to align the investment structures in the two plans with one another. An account holder can choose to actively manage investments; otherwise, the money is put into a series of age-based investment portfolios that become increasingly conservative over time.

Eligibility. 529 accounts can be used for expenses at any post-secondary school that qualifies to receive federal financial aid.

Virginia's 529 program. The Virginia program is the largest in the country in part because the state has a well-compensated population and a strong culture of education.

Marketing and outreach. The ETB spends approximately $750,000 annually on marketing and outreach. Enrollment in The Education Plan has increased as the marketing efforts increase. The board is also stepping up its efforts to get large employers and public employers — including the state — to offer 529 payroll deductions.

Mr. Miller agreed to provide information on public employee participation in the ETB education savings plan.

PERA: Strategic Goals; Staff and Salary Structure

Wayne Propst, executive director, PERA, and Jude Pérez, interim chief investment officer, PERA, reported to the committee on the PERA's goals and progress and gave an overview of its staff and salary structure relative to other state agencies.

The PERA began its strategic planning in 2013 and revised its initial plan in 2016. It currently has four strategic goals.

- *Sustaining the trust fund for current and future retirees.* The PERA's target investment return rate is 7.25 percent over the long term, and it recently reduced risk in the portfolio. It also has increased its focus on unfunded liabilities.
- *Improving PERA information technology (IT) infrastructure.* The IT system is being upgraded and will allow members to retire online.
- *Improving customer service.* The PERA serves 40,000 retirees and 50,000 active members.
- *Improving organizational effectiveness.* Effectiveness improvements include an accounting process improvement project, an expansion to the Albuquerque PERA office, increased outreach efforts and a new custody bank (The Bank of New York Mellon).

The PERA has 84 full-time positions, six of which are currently vacant. Salaries paid to its directors, officers and legal counsel are comparable to those paid for the same personnel in other state agencies that manage investments and pensions. However, according to the 2016 National Association of State Retirement Administrators Salary Survey, salaries for PERA directors, officers and legal counsel range from five percent to 34 percent lower than the average salaries for those personnel nationwide. The presenters noted that it is difficult to recruit qualified investment staff when other states offer incentive pay and performance-based bonuses.

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

Unfunded liabilities. The target for the portfolio investment return rate over the next seven to 10 years is 7.25 percent, with 7.75 percent after that. If the actual rate is lower, the PERA's unfunded liabilities will increase and its projected date for being 100 percent funded will be delayed. The PERA board directed PERA staff to conduct portfolio and liability "stress tests" to show the effects of higher or lower returns than are projected.

- Dominic Garcia, incoming PERA staff member, will provide information on performance incentives paid to investment personnel in the Wisconsin public employee retirement system.
- Mr. Propst will include scenarios in his September presentation that show the potential effect of a five percent increase in PERA contribution rates.

PERA Deferred Compensation Plan

Mr. Pérez was joined by Karyn Lujan, deferred compensation plan manager, PERA, to explain SmartSave, a 457(b) tax-deferred compensation retirement plan available to PERA members.

In contrast to the pension plans managed by the PERA, SmartSave is an optional defined contribution plan and, as such, carries no liability for the PERA. Participants set aside a portion of their salaries for investment in a series of portfolios that carry progressively lower risk as a participant nears retirement. Participants pay taxes on their SmartSave funds as the money is withdrawn. As of June 30, 2017, SmartSave had 20,466 participants — an increase of more than 1,200 over the previous year — and a net asset value of nearly $566.9 million.

The fee structure in the SmartSave plan was recently revised to make the plan more affordable to members with small account balances, a group that comprises two-thirds of the plan's participants. Rather than the previous annual fee of $52.00 per participant, each participant is now charged $30.00 plus 0.135 percent of the account balance.

On questioning, the presenters clarified that:

(1) annual contribution limits in the SmartSave plan are $18,000 per year, $24,000 per year if the participant is 50 years old or older and $36,000 per year when the participant nears retirement age;
(2) funds from 401(k) plans and any IRA other than a Roth IRA can be rolled into the SmartSave plan; and
(3) there is no penalty for early withdrawal of funds.

Retiree Health Care Authority (RHCA): Strategic Goals; Staff and Salary Structure

David Archuleta, executive director, RHCA, gave an overview of the RHCA's goals, plans and staff and salary structure, as well as changes RHCA members can expect in 2018.

The RHCA's mission is to "maintain comprehensive and affordable health insurance benefits for public retirees and eligible dependents", and its goals include extending the program's solvency and more smoothly meeting customer service needs. Its staff includes 27 full-time employee positions, with salaries ranging from $29,000 (customer service representatives) to $125,000 (executive director). The RHCA's trust fund balance is currently $564.1 million, with solvency projected for 2035.

Major challenges that the RHCA faces include a continuing escalation in prescription drug costs; a stagnant public payroll; volatility in the health insurance market due to uncertainty surrounding the federal Patient Protection and Affordable Care Act; and a disposition in Congress and in the White House to increase the Medicare eligibility age. To meet these challenges and to address solvency over the last five years, the RHCA made several changes to increase cost-sharing by retirees. Through action taken at its July meeting, the RHCA board will continue this approach for 2018 with a combination of premium increases and subsidy reductions while also making changes to prescription drug benefits, offering higher-deductible plans and expanding options for Medicare enrollment. The RHCA board also proposes employer and employee contribution increases, which would require legislative action.

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

Plans and programs. The RHCA is encouraging members to switch to plans that have higher out-of-pocket costs for the member but lower costs for the RHCA. It also encourages members to enroll in wellness programs.

Higher education institutions. All state higher education institutions are part of the RHCA except for the University of New Mexico, New Mexico State University, New Mexico Institute of Mining and Technology and San Juan College. If one of these institutions chooses to join, the entrance fee for the institution is set in statute.

A member expressed concern that solvency is becoming more of a focus for the RHCA than the hardships being imposed on participants through increased cost-sharing.

Adjournment

There being no further business, the committee adjourned at 4:05 p.m.

Revised: September 6, 2017

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

September 7, 2017
State Capitol, Room 322
Santa Fe

<u>Thursday, September 7</u>

9:00 a.m.		**Call to Order and Welcome** —Representative Tomás E. Salazar, Chair —Senator George K. Munoz, Vice Chair
9:05 a.m.	(1)	**Legislative Finance Committee (LFC) Quarterly Investment Report** —Dawn Iglesias, Economist, LFC
9:50 a.m.	(2)	**Educational Retirement Board (ERB): Sustainability and Solvency** —Jan Goodwin, Executive Director, ERB
11:20 a.m.	(3)	**Retiree Health Care Authority (RHCA): Sustainability and Solvency** —David Archuleta, Executive Director, RHCA
12:20 p.m.		**Approval of Minutes from the August Meeting**
12:25 p.m.		**Adjourn**

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

September 7, 2017
Room 322, State Capitol
Santa Fe

The third meeting of the Investments and Pensions Oversight Committee was called to order by Representative Tomás E. Salazar, chair, on September 7, 2017 at 9:05 a.m. in Room 322 of the State Capitol.

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

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

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

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

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

Guests
The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Thursday, September 7

Legislative Finance Committee (LFC) Quarterly Investment Report

Dawn Iglesias, economist, LFC, reported on the performance of investment portfolios managed by the Educational Retirement Board (ERB), the Public Employees Retirement Association (PERA) and the State Investment Council (SIC).

Over the past year, the aggregate value of the portfolios grew by nearly nine percent to a total of $48.6 billion, with the SIC portfolio showing the strongest return, at 10.7 percent. Returns in fiscal year (FY) 2017 ranged from 11 percent to 13 percent, a performance level that exceeded one- and five-year targets set by all agencies and that was due in part to a strong equities market.

While the investment strategies for all of the portfolios share a common focus — growing and preserving their funds for the long term — differing mandates for distributions from the funds have affected their growth. Distributions from the SIC-managed Land Grant Permanent Fund and Severance Tax Permanent Fund are calculated based on the funds' balances, revenue and contributions; if one of these funds shrinks, its distributions shrink as well. In contrast, distributions from the pension funds managed by the ERB and the PERA are based on benefits contractually owed to retirees, regardless of fund balances. This difference in liabilities across the funds is reflected in their growth in the last five years: the permanent funds grew by as much as 52 percent, while the pension funds grew at approximately 30 percent.

Portfolios at all three agencies consist of a blend of actively managed investments and passively managed, or indexed, investments. Nearly three-fourths of the SIC portfolio is actively managed by external investment firms working under contract. The ERB's actively managed investments constitute a similar share of its portfolio and are primarily handled by external firms as well; however, eight percent of the ERB portfolio is actively managed in-house. The PERA's portfolio is more heavily weighted to passive management than the other portfolios: just over one-half of its investments are passively managed while the balance is actively managed.

Two types of fees are paid for external investment management in all portfolios: 1) *management fees*, which cover the cost of managing a fund and are paid out of the fund itself, calculated on basis points; and 2) *performance fees*, which are a share of the profits generated by a fund and are paid out of the agency's state budget allocation. For FY 2016, combined management and performance fees came to $119.4 million for the ERB portfolio, $79.3 million for the PERA portfolio and $189.1 million for the SIC portfolio.

Ms. Iglesias noted that while all three portfolios performed well in the past few years, the agencies are considering changes to investment strategies to further improve performance, including shifting certain actively managed assets to passive management and building longer-term relationships with certain "core" investment managers.

Evaluating the portfolios for risk over the past five years, Ms. Iglesias found that each of the portfolios fell into the "good" range, a category that suggests that the level of return was fair for the level of risk taken. The PERA's portfolio was found to be the most volatile.

On questioning, Ms. Iglesias and committee members, as well as Dominic Garcia, chief investment officer, PERA, and Bob Jacksha, chief investment officer, ERB, who were in the audience, addressed the following topics.

Interagency cooperation. While Ms. Iglesias noted anecdotally that the ERB and the PERA work well with each other, she suggested that any questions about how much cooperation there is among the ERB, the PERA and the SIC be directed to the respective agencies.

Investment management fees and companies. Relative to the size of each fund, the ERB paid proportionally more in investment management fees (84 basis points) in FY 2016 than the SIC paid (59 basis points). Both actively and passively managed assets incur management fees, though fees for passive management are significantly lower.

Most of the investment management companies under contract with the ERB, the PERA and the SIC are large, out-of-state companies. The ERB's website includes information on investment management companies working under contract for the agency.

PERA. The PERA portfolio ranks the highest among state investment funds for risk. Investment strategies for this fund are currently being revised to reduce both risk and volatility.

Asset allocations. If a portfolio's performance does not match an upward trend in the market, asset allocations are changed. Active versus passive management classifications are based on market performance as well as management costs.

- Ms. Iglesias agreed to provide:
  (1) information on which investment companies are handling investments for the PERA, the ERB and the SIC;
  (2) whether any of the investment companies are handling investments for more than one of the agencies; and
  (3) a clarification on how investment management fees are paid by the SIC.

ERB: Sustainability and Solvency

Jan Goodwin, executive director, ERB, gave a presentation on the ERB's status in regard to sustainability and solvency. She opened with a definition of "solvency" — the ability of an organization to pay its obligations into the future — and stated that "the ERB is solvent".

In monitoring its solvency status, the ERB conducts a biennial "experience study" to assess the assumptions and methods used by its actuary. Economic assumptions include factors such as the long-term return rate on ERB investments, which affects fund balance projections, and the inflation rate, which affects calculations for wages and retiree benefit cost-of-living adjustments (COLAs). Based on the most recent experience study, the ERB adopted the following changes to its actuarial assumptions at its April 2017 meeting:

- the projected return rate for the investment portfolio was reduced from 7.75 percent to 7.25 percent;
- the inflation rate assumption was reduced from three percent to 2.5 percent;
- the wage inflation assumption was reduced from 3.75 percent to 3.25 percent;
- the payroll growth assumption was reduced from 3.5 percent to three percent; and
- the COLA assumption was reduced from two percent to 1.9 percent.

The ERB's projected date for reaching a 100 percent funded ratio is 84 years out, in the year 2100. Changes to plan elements, such as contribution rates and retirement eligibility age, can affect the time it would take for the plan to reach full fundedness. Plan enrollment also has an effect; current active membership is the same as it was in 2000 and may fall further, which could reduce revenue to the fund and delay full fundedness beyond current projections. "Return to work" retirees are another detriment to the fund, as many of them are not required by statute to make ERB contributions. Ms. Goodwin estimated that more than $6.27 million in ERB contributions were forgone in FY 2017 due to retirees returning to work and filling positions that otherwise would have gone to contributing active ERB members.

Various statutory changes can be made that would affect active members and future members, such as adjusting the vesting period or increasing contribution levels. However, the only change that can be made that affects retirees is a change to the COLA. COLA calculations have changed over time, ranging from nearly 2.75 percent in 1991 to zero in 2010. In 1984, COLAs were capped at four percent and negative adjustments were allowed; in 2010, the negative COLA provision was eliminated.

Changes to contribution levels can increase revenue to the fund but can also increase costs, as happened with the contribution "swaps" made in House Bill 628 from the 2011 regular session. With the intent of reducing state General Fund expenditures, the bill reduced employer contributions and increased employee contributions; with this change, however, the ERB's liability for benefits payable upon death or withdrawal increased because these benefits are paid calculated solely on employee contributions. Ms. Goodwin noted that the cost to the fund of this contribution swap was $37.4 million as of June 2014, and she estimated that the cost has doubled since that time. Similarly, the cost of legislation from 2005 that delayed employer contributions to the ERB cost the fund $143.6 million as of June 2014 and twice that amount to date.

On questioning, Ms. Goodwin and committee members, as well as Roderick Ventura, general counsel, ERB, who was in the audience, addressed the following topics.

Funded ratio. The dip in the ERB funded ratio projected during the years 2018 through 2064 on page 13 of Ms. Goodwin's handout is a result of Tier 1 members retiring.

The ERB plans to propose legislation in the 2019 session to adjust ERB plan elements so as to shorten to 30 years the time it would take to reach 100 percent fundedness.

COLAs. The COLA has averaged 1.5 percent over the years and is currently set at 1.3 percent. Last year, the COLA represented nine percent of the total ERB pension costs, or $90 million; however, this amount also includes the compounding factor from COLAs in prior years. Eligibility for a COLA is dependent on a retiree's tier classification, age and date of retirement. Approximately 10 percent of ERB retirees are not eligible for a COLA.

Membership. ERB membership would increase if the economy improves and the state's population increases, thus resulting in more teachers being hired. Vacancies in both public education and higher education aggravate the decline in ERB membership.

The ERB has approximately 50,000 inactive members, 40 percent of whom have vested. Some of those members are enrolled in the PERA system, and some of them have moved out of state.

A person can be an active member of only one state pension plan at a time. If an active PERA member takes a teaching job as an adjunct professor, that person would continue to pay into the PERA system rather than the ERB system and would not earn ERB service credit for that teaching position.

Substitute teachers. Long-term substitute teachers make ERB contributions, but short-term substitutes — those who work less than a quarter-time schedule — do not. Some substitutes who have paid into the ERB system have not received pension benefits or withdrawn their money from the system because the ERB cannot locate or contact them.

Pension system failure. In some places in the country, such as Detroit, pension systems have failed when a local government's finances collapse. One contributing factor in Detroit's pension problems was its policy of issuing a thirteenth pension check to retirees each year; the ERB does not issue such additional checks. The ERB's proposals to adjust pension plan elements are aimed at avoiding a pension system failure.

Spiking. The spiking phenomenon, in which a part-time employee switches to full-time work during the final years before retirement, is more a perceived problem than an actual one and has been a minor cost to the ERB. A bill that had been sponsored by former Senator Sue Wilson Beffort would have adjusted final average salary calculations to prevent spiking, but the bill failed.

Budget adjustment request. The Department of Finance and Administration did not approve the ERB's budget adjustment request.

- Ms. Goodwin agreed to provide:
  (1) information on which states pay social security for teachers; and
  (2) an actuarial report on the effect on the ERB fund of return rates that are higher or lower than the projected 7.25%.

Retiree Health Care Authority (RHCA): Sustainability and Solvency

David Archuleta, executive director, RHCA, reported on the RHCA's solvency status, which is gauged by means of an annual solvency study.

The RHCA solvency study's analysis of future revenue and expenditures assists the RHCA board in developing strategies to sustain its health care system for retirees. Based on the latest analysis, the RHCA is projected to be solvent for 18 years out, to the year 2035.

In 2016, the RHCA had nearly 160,000 participants enrolled. In the same year, its assets totaled nearly $472 million, with a plan funded ratio of just over 11 percent and an unfunded accrued liability of $3.8 billion. New reporting requirements issued by the Governmental Accounting Standards Board will take effect for data reported for FY 2017 and following years.

The RHCA board has included several measures in its strategic plan aimed at sustaining the system. Most of its proposed steps can be taken without legislative involvement, such as reducing subsidies, adjusting programs and increasing copays. Mr. Archuleta noted that all of these measures would increase costs for retirees. The board's one proposal that would increase costs for members — increasing contribution levels — would require legislation.

On questioning, Mr. Archuleta noted that:

(1) last year, approximately 300 retirees participated in RHCA wellness programs, which are administered through the insurance companies;
(2) the RHCA offers nine Medicare plan options and has expanded those plans into new areas of the state; and
(3) one solvency measure under consideration is to tie subsidy levels to a retiree's age at retirement.

Minutes

On a motion duly made, seconded and unanimously adopted, the minutes from the August 3, 2017 meeting were approved.

Adjournment

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

Revised: October 18, 2017

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

October 19-20, 2017
State Capitol, Room 322
Santa Fe

Thursday, October 19

9:00 a.m.		**Call to Order and Welcome** —Representative Tomás E. Salazar, Chair —Senator George K. Munoz, Vice Chair
9:05 a.m.	(1)	**Revenue Generated from State Trust Lands** —Aubrey Dunn, Commissioner of Public Lands, State Land Office (SLO) —Sandra Lopez, Assistant Commissioner for Administrative Services, SLO
10:05 a.m.	(2)	**Return to Work Laws and Educational Retirement** —Jan Goodwin, Executive Director, Educational Retirement Board (ERB) —Roderick Ventura, General Counsel, ERB
11:05 a.m.	(3)	**Land Grant Permanent Fund Distributions: Who, What, How and Why** —Dawn Iglesias, Economist, Legislative Finance Committee
12:05 p.m.		**Approval of Minutes from the September Meeting**
12:10 p.m.		**Lunch**
1:30 p.m.	(4)	**Public Employees Retirement Association (PERA): Sustainability and Solvency** —Wayne Propst, Executive Director, PERA
3:00 p.m.	(5)	**New Mexico Private Equity and Other Economically Targeted Investments in the Severance Tax Permanent Fund** —Steven K. Moise, State Investment Officer, State Investment Council (SIC) —Robert "Vince" Smith, Deputy State Investment Officer, SIC —Sally Corning, Sun Mountain Capital

4:00 p.m. (6) **Investing in New Mexico: Needs, Opportunities and Benefits**
—Jason Espinoza, President and Chief Executive Officer, New Mexico Association of Commerce and Industry
—Thomas J. Stephenson, Managing General Partner, Verge Fund

5:00 p.m. (7) **Fees, Returns and Cost-Effective Management of Large Public Fund Investment Programs**
—Allan C. Martin, Partner, NEPC, LLC

6:00 p.m. **Recess**

Friday, October 20

9:00 a.m. **Reconvene**

9:05 a.m. (8) **Private Sector Retirement Insecurity**
—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
—John W. Mangan, Regional Vice President, American Council of Life Insurers
—Sarah Mysiewicz Gill, Senior Legislative Representative, AARP

11:05 a.m. (9) **Update from the Retirement Income Security Task Force**
—Senator Bill Tallman
—DeAnza M. Valencia, Associate State Director for Advocacy, AARP

12:05 p.m. **Public Comment**

12:20 p.m. **Adjourn**

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

October 19-20, 2017
State Capitol, Room 322
Santa Fe

The fourth meeting of the Investments and Pensions Oversight Committee (IPOC) was called to order by Representative Tomás E. Salazar, chair, on October 19, 2017 at 9:05 a.m. in Room 322 of the State Capitol.

Present	**Absent**
Rep. Tomás E. Salazar, Chair	Sen. George K. Munoz, Vice Chair
Rep. Miguel P. Garcia	Sen. Jacob R. Candelaria
Rep. Larry A. Larrañaga	Sen. Gay G. Kernan
Sen. Carroll H. Leavell	Rep. Patricia Roybal Caballero
Sen. Steven P. Neville	Sen. John M. Sapien
Rep. Jane E. Powdrell-Culbert	Rep. Jim R. Trujillo
Rep. William "Bill" R. Rehm (10/19)	
Rep. Larry R. Scott	
Sen. Elizabeth "Liz" Stefanics	

Advisory Members

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

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

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

Guests
The guest list is in the meeting file.

Handouts
Handouts and other written testimony are in the meeting file.

Thursday, October 19

Revenue Generated from State Trust Lands

Aubrey Dunn, commissioner of public lands, gave an overview of State Land Office (SLO) management of public lands and the revenue generated by those lands.

Eleven percent of the land in New Mexico is owned by the state, with earnings from those lands falling into two categories.

- Rental income, which totaled $102.3 million in fiscal year (FY) 2017, comes from mining, rights of way, grazing, renewable energy, business leases, oil and gas, fees and interest.
- Royalty income, which totaled $663.9 million in FY 2017, comes from mining, oil and gas and water.

Currently, the oil and gas industry accounts for 94 percent of the revenue generated from state trust lands. Renewable energy projects, which account for .07 percent of state trust land revenue, are also installed or under development, primarily in the state's central and eastern areas.

Depending on the source of the revenue, earnings from state trust lands are deposited into either the State Lands Maintenance Fund or the Land Grant Permanent Fund. Five percent of the five-year average market value of the Land Grant Permanent Fund is distributed annually to 21 state institutions designated by name or function in the Constitution of New Mexico, with public schools receiving the largest share at approximately 84 percent. As of this year, state trust land revenue will also go to the newly created State Trust Lands Restoration and Remediation Fund for rangeland, forest and watershed remediation; wildlife habitat improvement; illegal dump site cleanup; and cultural resource stabilization.

Commissioner Dunn noted that while the SLO does not regulate or issue permits for water wells, these wells may be drilled on state trust lands. As it does for oil and gas wells, the SLO issues easements for access to water wells. Given the fragile state of the Ogallala Aquifer in the eastern part of the state, the SLO has restricted water easements that involve the use of fresh water in certain oil and gas operations.

On questioning, Commissioner Dunn and committee members addressed the following topics.

Land Grant Permanent Fund. Members expressed both support for and concerns about increasing distributions from the fund, as well as possible limitations on distributions if they are increased. The current five percent distribution level is standard for endowment funds. If federal lands and their mineral rights are transferred to the state, fund revenue would increase.

State Investment Council (SIC). Some members of the council, including Commissioner Dunn, have refused to sign an ethics code because they feel it is a "gag order". By not signing the code, these members will be excluded from future council executive sessions, during which personnel issues and legal matters are addressed. None of the members who refused to sign the ethics code is a gubernatorial appointee.

Ogallala Aquifer. Commissioner Dunn and members made various statements concerning water wells on state trust lands over the Ogallala Aquifer, including that: 1) Texas companies with water wells across the state line sell water from the aquifer to New Mexico-based oil and gas operations; 2) Ray Westall, whose water-drilling company owes the SLO approximately $1.3 million in overdue rental payments, has filed a lawsuit against the SLO over its restrictions on water well easements; 3) the top 10 oil and gas producers in the state have not objected to the SLO's water well easement policy; 4) up to 80 percent of the water now used in hydraulic fracturing is recycled or produced water, not fresh water; and 5) Colorado has imposed restrictions on drilling into the aquifer.

Rights of way. A study conducted by the former commissioner of public lands, Ray Powell, recommended that right-of-way rates be increased by 100 percent to match market rates, which are the rates that the SLO is constitutionally required to charge. The SLO increased the rates by 25 percent last year. While oil and gas companies are not pleased about a rate increase, they are willing to pay for expedited rights of way at three times the cost of a regular right of way.

Wind towers. Wind energy installations on state trust lands near White Sands Missile Range and Cannon Air Force Base have been delayed due to pressure from the military, which uses the areas for training flights.

Oil and gas drilling leases. Drilling leases issued by the SLO are good for five years and allow both vertical and horizontal drilling.

- Commissioner Dunn agreed to provide information on:
  (1) materials used in constructing wind towers; and
  (2) revenue generated from state land leases for wind turbines.

Return-to-Work Laws and Educational Retirement

Jan Goodwin, director, Educational Retirement Board (ERB), and Roderick Ventura, general counsel, ERB, reported on issues related to ERB members who work after retirement.

An ERB member may return to work beginning 12 months after the member's retirement date without suspending ERB retirement benefits. The member is limited under the return-to-work program to earning $15,000 per fiscal year or working a .25 full-time-equivalent schedule. Unless the member qualifies for one of three program exceptions, the member must pay ERB contributions while employed under the program.

The return-to-work program, created in 2001, was originally intended to address teacher shortages in rural school districts. Of the top five entities employing return-to-work members as of FY 2017, however, three are school districts, two are universities and none is rural. As reported by employers, more than one-half of those participating in the return-to-work program are in non-teaching positions, including administrative positions.

Cooperative Educational Services (CES), a procurement agency that places retired education professionals in public school district jobs, recently filed a lawsuit against the ERB over a letter sent by the ERB to its members. The letter explained the contribution requirements under the return-to-work statute and cautioned members about taking work through third-party entities that may or may not be in compliance with those requirements.

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

Retirement contributions, benefits and eligibility. There is no difference in the state's ERB contribution cost between regular teachers and return-to-work teachers. The cost difference is seen in salaries: return-to-work teachers, who tend to be at a higher salary level, displace new teachers, who are hired at a beginning salary level.

There is no cap on ERB retirement benefits at 25 years; a teacher who works longer than that will accrue increased benefits. Actuarially, a teacher is better off working beyond 25 years than taking an early retirement and returning to work.

The 12-month gap between retirement and return-to-work employment is required by the Internal Revenue Service.

The ERB structure is consistent with best practices for retirement systems in other states.

An ERB member is eligible for cost-of-living adjustments (COLAs) beginning either at age 65 or one year following retirement, whichever is later. COLAs are based on the change in inflation and are, on average, 1.5 percent.

CES complaint. Mr. Ventura noted that it is the ERB's understanding that CES seeks a writ of mandamus to stop the ERB from sending out return-to-work information to its members because CES believes it is not in violation of the return-to-work statute.

Compensation. Ms. Goodwin noted that, though not intended for such, the return-to-work program is being used to address what is actually a compensation issue.

- Ms. Goodwin agreed to provide information on ERB contributions made by return-to-work employees.

Land Grant Permanent Fund Distributions: Who, What, How and Why

Dawn Iglesias, economist, Legislative Finance Committee, expanded on Commissioner Dunn's presentation to further explain the flow of money into and out of the Land Grant Permanent Fund.

While the net asset value for the fund — currently $16.2 billion — rose nearly every year since FY 2012, SLO deposits varied significantly during that time, with a high of nearly $800 million in FY 2014 and a low of less than $400 million in FY 2017.

Distributions from the fund for FY 2017 totaled just over $638 million in FY 2017. The fund's 21 beneficiaries receive distributions based on the earnings from specific parcels of state land, with earnings varying from year to year based on each parcel's productivity. While Land Grant Permanent Fund distributions are included in each year's general appropriation act, they are rolled into the "other state funds" category for each beneficiary and are not tracked separately at either the point of receipt or point of expenditure.

Because the Land Grant Permanent Fund beneficiaries were enumerated in the Constitution of New Mexico to comply with requirements in the Enabling Act for New Mexico and the federal Ferguson Act of 1898, a change to the list of beneficiaries would require a change to the state's constitution and would require changes to federal statutes.

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

Discrepancy between presentations. Ms. Iglesias' materials showed distribution amounts solely from the Land Grant Permanent Fund, while distribution amounts in Commissioner Dunn's materials included amounts from the State Lands Maintenance Fund.

Rainy day fund. The consensus revenue estimate that Ms. Iglesias presented for FY 2017 through FY 2019 does not include revenue to the state's "rainy day fund" from the oil and gas school tax because the tax is not estimated to generate revenue for that fund until FY 2021.

Beneficiaries and distributions. Land parcels assigned to specific beneficiaries may be swapped for other land; in that case, the beneficiary distributions are based on earnings from the new parcels.

While constitutional amendments have been used over the years to change the names of beneficiaries, a court decision found that a change in a beneficiary's location does not require a constitutional amendment or affect its designation as a beneficiary. If a beneficiary closes, as was the case with the New Mexico Boys' School, its distribution goes to the administering state agency — in this case, the Children, Youth and Families Department. The overall annual distribution from the Land Grant Permanent Fund can be adjusted by constitutional amendment.

There are no restrictions on how a beneficiary may use distribution funds.

- Ms. Iglesias agreed to provide information on:
  (1) how the Office of the State Engineer uses the Land Grant Permanent Fund distribution allocated to "improvement of the Rio Grande";
  (2) how specific acreage is assigned to Land Grant Permanent Fund beneficiaries;
  (3) how a Land Grant Permanent Fund distribution is handled if the beneficiary no longer exists; and
  (4) the "land grant institution" designation as it applies to Land Grant Permanent Fund distributions.

Minutes

On a motion duly made, seconded and unanimously adopted, the minutes from the September 7, 2017 meeting were approved.

Public Employees Retirement Association (PERA): Sustainability and Solvency

Wayne Propst, executive director, PERA; Dominic Garcia, chief investment officer, PERA; and Jonathan Craven, consulting actuary, Cavanaugh McDonald Consulting, gave an update on the PERA funds, their returns over time and projections for their solvency.

The PERA funds closed FY 2017 with a balance of $15 billion, with one-year returns of 11 percent. Three-year and five-year returns for the fund were 4.4 percent and 8.53 percent, respectively, with the three-year return falling short of the policy benchmark and the five-year return exceeding the benchmark. Ten-year returns, at 3.97 percent, fell short of their benchmark due to the precipitous drop in asset values during the 2008 recession, which falls within the 10-year calculation time period.

The presenters gave funded ratio projections based on investment return scenarios and COLA revisions proposed by committee members in a previous meeting, as well as projections based on actual returns seen in the past five years. In 2043, the PERA will be:

- 133.1 percent funded if returns continue at the level seen in 2014;
- 87.6 percent funded if returns continue at the level seen in 2016 and 2017; and
- 29 percent funded if returns continue at the level seen in 2012.

Excluding the state police plan, which is already fully funded, plans within the PERA vary in their funded ratio projections for 2043 from 107.5 percent (municipal general plan) to 46 percent (state general plan).

PERA benefits paid in FY 2017 came to more than $1 billion and will increase as more active members retire. Since it was last fully funded in 2002, the PERA has accrued an unfunded liability of $4.82 billion, primarily due to lower-than-expected investment returns. The presenters noted that an overall PERA contribution increase of 2.91 percent would help address the shortfall.

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

Solvency measures. Fixing the PERA funded ratio situation could involve a variety of measures, including changes to contributions, benefits, COLAs and investments. The PERA needs to expand its efforts to educate members on the PERA funds' solvency status and measures that would keep the funds solvent.

PERA benefits and COLAs. The PERA benefits package is one of the most generous in the country. Changes to benefits can only be made for new employees entering the PERA system.

A COLA increases the base benefits pay while a bonus, or dividend, does not. The Wisconsin system does not have a COLA; it pays a base retirement benefit plus a dividend based on investment returns.

Other state pension systems. Wisconsin, South Dakota and North Carolina have pension systems that are, or are close to, 100 percent funded. Other states are looking at possible adjustments to their plans to address demographic changes, such as longer life spans for retirees. A member noted that it would be appropriate for the PERA to study and provide information on best practices followed by other state pension systems.

- Mr. Propst agreed to provide:
  - (1) PERA solvency projections based on:
    - (a) a one percent contribution increase from both the employer and the employee;
    - (b) a .5 percent contribution increase from both the employer and the employee; and
    - (c) COLAs in alternating years, with a thirteenth check issued to retirees in the intervening years;
  - (2) information on whether a thirteenth check issued to retirees would be taxable and require contributions to retiree health care;
  - (3) information from the National Organization of State Retirement Administrators on pension systems in other states that are doing well; and
  - (4) the total amount that has been contributed to the PERA funds since their inception and the total amount that has been earned by the funds since their inception.

New Mexico Private Equity and Other Economically Targeted Investments (ETIs) in the Severance Tax Permanent Fund

Steven K. Moise, state investment officer, SIC; Robert "Vince" Smith, deputy state investment officer, SIC; and Sally Corning, Sun Mountain Capital, gave a presentation on ETIs, which include a variety of investment types ranging from mortgage pass-through securities to film loans.

Provisions in the Severance Tax Bonding Act authorize the state to invest up to nine percent of the market value of the Severance Tax Permanent Fund in "private equities or New Mexico businesses". While the intent of New Mexico-based investments is to stimulate the state's economy, ETIs in general tend to perform below market and can have a negative effect on the Severance Tax Permanent Fund's overall performance. Currently, ETIs account for seven percent of the Severance Tax Permanent Fund; the SIC has set a target of five percent of the fund to be invested in New Mexico businesses through the New Mexico Private Equity Investment Program, with annual commitments of $30 million to $35 million. Sun Mountain Capital assesses New Mexico businesses for potential investment through the program's three initiatives: 1) a fund of funds program; 2) co-investment funds; and 3) the Catalyst Fund.

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

Catalyst Fund. The Catalyst Fund provides funds for other funds, which must raise capital first in order to qualify for the money.

Qualifying businesses. It is a challenge for Sun Mountain to find companies outside the Rio Grande corridor that qualify for investment and will yield a good investment return.

SIC. Members and presenters made various comments regarding SIC activities, duties and composition, including: 1) concerns that SIC members had been required to sign a code of ethics, or "loyalty pledge to a pot of money", and that those who had chosen not to sign will be excluded from SIC executive sessions on employment matters; 2) that the SIC is required by statute to be fiduciaries — by definition, to make decisions in the best interest of the funds in its control — except in the case of ETIs; 3) that ETIs on the one hand promote economic development in the state and on the other hand can be politically motivated; 4) that the state seems to do less well as the money per capita in its permanent funds grows; 5) that the SIC was restructured in statute to reduce executive branch or political influence; and 6) that the SIC is still in litigation to recover funds.

Local bond issuances. The SIC does not invest in local bonds, such as those issued by the Jal Public School District.

EnnisKnupp report. The SIC has implemented 78 of the 82 recommendations made in a report issued by EnnisKnupp.

- Mr. Smith agreed to provide a dollar amount for the 3.9 percent figure cited as the return on ETIs.

Investing in New Mexico: Needs, Opportunities and Benefits

Jason Espinoza, president and chief executive officer, New Mexico Association of Commerce and Industry, and Thomas J. Stephenson, managing general partner, Verge Fund, spoke of the benefits of using public money, including pension funds, to invest in New Mexico-based ventures. Mr. Stephenson acknowledged that the SIC, using its Catalyst Fund, invested in the Verge Fund in 2005 and serves as a limited partner in that fund.

Just as New Mexico statute allows for investment in ETIs, several other states have included "alternate asset classes" in their investment portfolios to direct funds to local economic development. The presenters gave as examples the New York State Common Retirement Fund, which invests in technology-based start-ups and businesses seeking expansion capital; the Badger Fund of Funds in Wisconsin, which provides capital to start-up businesses; and the Robert Trent Jones Golf Trail in Alabama, which received funding from the Retirement Systems of Alabama.

Start-up businesses seeking capital have access to the SIC Catalyst Fund only through the initial stages of development. Once a company becomes fully operational and SIC funding is no longer available, it is likely to move out of state if the next phase of funding is not found locally. Possible steps the state can take to keep these businesses from leaving include expanding SIC investments in local businesses, expanding the state's angel tax credit and exempting the sale of New Mexico businesses from the capital gains tax.

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

Investment requirements. Collateral requirements for public pension private equity investments would match private equity collateral requirements under other state investment programs.

The Verge Fund does not require that companies stay in New Mexico to receive funding.

Taos Ski Valley. Taos Ski Valley is an example of successful local investment; the village was entirely New Mexico-built and -financed.

Brain drain. New Mexico is losing its "millenial generation" population both because millenials cannot find jobs here and because they feel they cannot create jobs here.

Capital gains tax. Some companies have left the state just prior to being bought by another company in order to avoid paying the capital gains tax.

Fees, Returns and Cost-Effective Management of Large Public Fund Investment Programs

Allan C. Martin, partner, NEPC, LLC, and general investment consultant, ERB; Ms. Goodwin; and Bob Jacksha, chief investment officer, ERB, explained the types of fees imposed on the state's permanent fund investment portfolios.

Fees differ based on an investment's asset class (such as large cap equity or private equity), the market in which the investments are traded (public or private) and the type of management involved (active or passive). Ideally, fees are paid for value that is added to investments, taking into consideration the amount of risk involved. Asset classes at the high end of the fee scale have higher expected returns and carry increased risk, while expected returns and risk are lower for asset classes at the other end of the fee scale.

Fees charged in the public market are either:

- flat fees, which are usually used for passive or indexed assets;
- tier or asset-based fees, which are based on the size of the investment; or
- performance-based fees, which include a base fee plus additional compensation based on excess returns.

Private market fee structures tend to be higher than those in the public market. Private equities, which have done very well in the past five years but are also volatile, tend to have the highest fees in both markets.

Indexed funds — those that are passively managed — usually outperform actively managed funds; however, active management is more likely to add value to investments when the market is inefficient or volatile.

Mr. Martin noted that an agency's decision to manage funds in-house rather than to contract for management services should take into consideration more than just the fees that might be incurred or avoided. An agency must also consider whether it has competent personnel who can manage a portfolio and, if not, whether investment managers can be recruited and retained at the salaries the agency can offer. The ERB has investment management personnel on staff and will soon expand the number of its assets that are managed in-house.

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

Fees. Fees charged to the ERB by Mr. Martin's firm do not vary from year to year based on the market; the company charges a fixed annual fee of $375,000.

Indexed versus actively managed funds. Even though indexed funds tend to outperform actively managed funds, their success depends on what is doing well in the market at a given time. Rather than place an entire portfolio under either passive or active management, each asset class's management should be considered separately based on the current market.

The ERB changed its core bonds fund from an indexed fund to an in-house actively managed fund and has saved $1 million in fees per year since the move. Co-investing has also saved the ERB money on fees.

ERB staff compensation. The state's classified employee salary ranges hinder the ERB's efforts to attract and retain investment management personnel. A bill introduced in the last session would have made all ERB employees exempt, thus allowing the agency to bring salaries into the range paid by other pension funds.

The committee recessed at 5:55 p.m.

Friday, October 20

The committee reconvened at 9:05 a.m., with Representative Salazar chairing the meeting.

Private Sector Retirement Insecurity

John C. Scott, director, Retirement Savings Project, The Pew Charitable Trusts (Pew); John W. Mangan, regional vice president, American Council of Life Insurers (ACLI); and Sarah Mysiewicz Gill, senior legislative representative, AARP, reported on the reasons for and ramifications of the $4.1 trillion shortfall in retirement savings for private sector workers.

According to a Pew study, only 22 percent of Americans feel "very confident" that they will have enough money in their retirement. Overall, 28 percent of full-time workers and 60 percent of part-time workers have no access to an employer-sponsored retirement plan, with those percentages increasing significantly for non-white workers. In New Mexico, more than 60 percent of all workers lack access to a retirement plan — more than 336,000 workers in 2014, according to the U.S. Census Bureau.

Large employers are twice as likely to offer plans than small employers, and while workers are 2.5 times more likely to participate in retirement plans that include contributions from their employers, many plans do not include employer contributions. In addition, workers face barriers to retirement savings that go beyond access to employer-sponsored plans, including the recent recession, job insecurity, the fragility of small businesses, slow wage growth, student and consumer loan debt, health care costs, housing costs and lack of information on available savings plans.

The presenters described both positive and negative aspects of policy initiatives launched by other states to increase access to retirement plans for private sector employees. The initiatives include: 1) plans with optional automatic payroll deductions deposited to individual retirement accounts (IRAs), known as "auto-IRA plans"; 2) online marketplace exchanges where employers can get information on retirement savings plans; and 3) multiple-employer plans that allow businesses in disparate industries to create joint retirement plans. Representative Salazar presented a letter from Kim Chamberlain, general counsel, Securities Industry and Financial Markets Association, who was unable to participate in the presentation, stating the association's objections to the public initiatives for retirement savings.

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

Multiple-employer plans. Per federal law, only employers in the same industry may participate in multiple-employer plans. States that allow multiple-employer plans avoid this restriction by structuring the plans so that the state is the plan agent rather than a single business.

Auto-IRA plans. By aggregating accounts, auto-IRA plans bypass the minimum-deposit requirement for opening an IRA and have no minimum monthly deposit requirement.

The auto-IRA OregonSaves plan is a public-private partnership structured in the same manner as a 529 education savings plan, in which the individual retains investment control over the funds. As a post-tax payroll deduction, there is no tax revenue loss to the state. Employers are required to offer a plan, though employees are not required to participate. The ACLI has concerns that the OregonSaves plan does not meet requirements under the federal Employee Retirement Income Security Act of 1974.

Incentives and information. States can waive licensing fees for new businesses that choose to set up employee retirement savings plans, match the federal plan start-up tax credit, provide information on federal tax credits for retirement savings and add financial literacy to high school curricula.

Retirement Income Security Task Force

Senator Bill Tallman and DeAnza M. Valencia, associate state director for advocacy, AARP, gave an update on the work under way by the Retirement Income Security Task Force convened pursuant to Senate Joint Memorial 12 of the 2017 regular legislative session.

The joint memorial requested that the state treasurer convene a task force to identify options and a process for implementing a retirement savings vehicle for private sector employees. In its two meetings to date, the task force discussed the state's over-reliance on social security; public initiatives under way in other states, including lessons learned from those efforts; and a possible New Mexico-specific retirement savings plan for private sector workers. The Bureau of Business and Economic Research at the University of New Mexico will present a report on the issue at the task force's next meeting, scheduled for December 2017. The task force will continue to meet on a bimonthly basis and will present its findings to the IPOC in July 2018.

On questioning, the presenters and committee members discussed differences in retirement security and income stability between urban and rural populations in the state, as well as difficulties posed by possible reductions to Medicare and other federal programs.

- Senator Tallman and Ms. Valencia agreed to:
  (1) contact the Workforce Solutions Department regarding the department's unfilled seat on the Retirement Income Security Task Force; and
  (2) include on the task force's agenda those topics that were discussed by the IPOC in the 2016 interim.

Public Comment

Dr. Benjamin Shuster, legislative advocacy volunteer, AARP, brought to the committee's attention the recently named 2017 Nobel Prize laureate in economics, Professor Richard Thaler of the University of Chicago, whose most-cited research shows that people are more likely to participate in financial programs that require them to opt out rather than opt in.

Adjournment

There being no further business, the committee adjourned at 11:50 a.m.

Revised: November 6, 2017

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

November 13, 2017
State Capitol, Room 307
Santa Fe

Monday, November 13

10:00 a.m. **Call to Order and Welcome**
—Representative Tomás E. Salazar, Chair
—Senator George K. Munoz, Vice Chair

10:05 a.m. (1) **Retiree Health Care Authority (RHCA):**
- **Actuarial Valuation; Governmental Accounting Standards Board (GASB) Statements 74 and 75**
- **Transparency**

—David Archuleta, Executive Director, RHCA

10:35 a.m. (2) **Public Employees Retirement Association (PERA):**
- **Transparency**
- **Actuarial Valuation; GASB Statements 67 and 68**
- **Wisconsin's Incentive Program for Public Pension Investment Staff**

—Wayne Propst, Executive Director, PERA
—Anna Williams, Chief Financial Officer, PERA
—Dominic Garcia, Chief Investment Officer, PERA

12:05 p.m. **Lunch**

1:30 p.m. (3) **Educational Retirement Board (ERB):**
- **Transparency**
- **Actuarial Valuation; GASB Statements 67 and 68**
- **Proposed Legislation**

—Jan Goodwin, Executive Director, ERB
—Bob Jacksha, Chief Investment Officer, ERB
—Roderick Ventura, General Counsel, ERB

3:00 p.m. (4) **State Investment Council (SIC): Transparency**
—Steven K. Moise, State Investment Officer, SIC
—Charles Wollmann, Director of Communications and Legislative Affairs, SIC

3:45 p.m. **Adjourn**

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

November 13, 2017
State Capitol, Room 307
Santa Fe

The fifth meeting of the Investments and Pensions Oversight Committee (IPOC) was called to order by Representative Tomás E. Salazar, chair, on November 13, 2017 at 10:05 a.m. in Room 307 at the State Capitol.

Present
Rep. Tomás E. Salazar, Chair
Sen. George K. Munoz, Vice Chair
Rep. Miguel P. Garcia
Sen. Gay G. Kernan
Rep. Larry A. Larrañaga
Rep. Jane E. Powdrell-Culbert
Rep. William "Bill" R. Rehm
Rep. Patricia Roybal Caballero
Rep. Larry R. Scott
Sen. Elizabeth "Liz" Stefanics

Absent
Sen. Jacob R. Candelaria
Sen. Carroll H. Leavell
Sen. Steven P. Neville
Sen. John M. Sapien
Rep. Jim R. Trujillo

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

Sen. William F. Burt
Sen. Mary Kay Papen
Sen. William H. Payne

Guest Legislator
Sen. John Arthur Smith

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

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

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

<u>Monday, November 13</u>

Retiree Health Care Authority (RHCA)

David Archuleta, executive director, RHCA, reported on the RHCA's compliance with new long-term liability reporting requirements and on its transparency efforts.

As reported on its June 30, 2017 Governmental Accounting Standards Board (GASB) Statement 74, the RHCA's long-term liability is $4.5 billion. This figure is based on key assumptions of a 7.25 percent investment return and average general obligation municipal bond ratings of AA/Aa or higher over 20 years. The plan's net assets total $575.6 million, for plan fundedness of 11.26 percent.

The RHCA has 301 participating employer groups, ranging from state agencies to school districts. Under new requirements imposed by the GASB, the RHCA's total long-term liability must now be reported proportionally by each employer group.

The plan covers approximately 160,000 members, an increase of nearly 20,000 members since its inception in 2006. Members and the general public can access information about benefits and RHCA financial reporting, audits and meetings through the RHCA website. Contracts issued by the RHCA are posted on the state's Sunshine Portal website.

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

Plan liability and fundedness. While the RHCA's long-term liability total has not changed much since 2006, the plan's fundedness grew during that time from 3.62 percent to 11.26 percent, mostly due to benefits changes. Similar plans in 19 states are less than one percent funded, and plans in eight states are more than 30 percent funded.

Revenue increases and cost-saving measures. The RHCA is considering benefits changes and contribution increases, but no statutory changes. Employer groups have not expressed any concerns about increases.

The RHCA gets purchasing discounts through its membership in the Interagency Benefits Advisory Committee and is willing to consider multistate purchasing arrangements. The RHCA also reduces costs through formularies, step therapy, incentives for lowest-cost purchases and wellness programs.

Most other states that offer retirement health benefits plans are changing benefits to reduce costs; none has yet dropped its plan entirely.

GASB. Requirements imposed by the GASB address financial reporting but not how the RHCA is funded. The RHCA provides assistance to employer groups in meeting the GASB reporting requirements.

RHCA plans. The RHCA offers three plans for members who are not yet eligible for Medicare and nine plans, including a supplemental plan, for Medicare-eligible members.

Membership. Only one additional employer group has joined the RHCA since 2006. An employer group may join by paying full actuarial value for its participants and may spread the payments on that purchase over a 13-year period, plus 7.5 percent interest.

Benefits access. A member who qualifies for RHCA benefits but either has gone to work for another employer or has access to benefits through a spouse's coverage must take benefits through the new employer or the spouse rather than access RHCA benefits.

Step therapy. A member suggested that Mr. Archuleta look into provisions in other states that exempt people who are already on prescription drugs from enrollment in step therapy.

- Mr. Archuleta agreed to provide information on any penalties imposed for noncompliance with GASB Statements 74 and 75.

Minutes

After a motion was made and seconded for approval of the minutes from the committee's October 19-20, 2017 meeting, a committee member questioned the wording in the portion of the minutes that describes a presentation by Dawn Iglesias of the Legislative Finance Committee (LFC) regarding Land Grant Permanent Fund beneficiaries. In discussion, members noted that minutes are a reflection of what a presenter actually says. Committee staff were directed to review the webcast of the meeting to ascertain Ms. Iglesias' wording in the questioned portion of the minutes and to report back as to whether the minutes needed a correction.

Public Employees Retirement Association (PERA)

Wayne Propst, executive director, PERA; Anna Williams, chief financial officer, PERA; and Dominic Garcia, chief investment officer, PERA, gave a presentation on PERA transparency efforts, its actuarial valuation, practices from the Wisconsin pension system that could benefit New Mexico and challenges that the PERA faces in attracting qualified investment personnel.

The PERA's transparency measures include board and committee meetings that are open to the public and live-streamed; online minutes; timely responses to Inspection of Public Records Act (IPRA) requests; accountability and ethics training, evaluation and review for PERA personnel; and improved reporting on vendor compliance with the Gift Act. All money manager expenses are disclosed annually to the PERA board and the legislature, and returns are reported net of fees and expenses.

The PERA's governance structure includes oversight and review from multiple sources, including internal and external auditors; external actuaries; the custodian bank; and independent investment consultants. On its fiscal year (FY) 2016 financial audit report — and for the first time in its history — the PERA received an unmodified opinion with no findings.

As reported on its GASB Statement 67, the PERA net pension liability is $5.27 billion, down from $6.16 billion in 2016, due to favorable market conditions in the past year. Under new GASB reporting requirements, the total liability is apportioned among all participating employers.

Mr. Garcia, who worked for the Wisconsin pension system prior to joining the PERA, described strengths in the Wisconsin system that could be incorporated into the PERA system, notably increased internal investment management. Qualified investment managers would be necessary for such a change; however, the PERA is hampered in its recruitment efforts by the salaries it can offer, which are significantly lower than what investment managers can earn elsewhere. Mr. Garcia outlined a possible salary structure that would include pay-for-performance incentives and would be capped at $500,000 per year.

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

Wisconsin pension plan. Oversight of the Wisconsin pension plan is provided by a board similar to the PERA board and by a legislative body similar to the IPOC.

The Wisconsin system recruits qualified investment managers primarily by finding people who want to return to Wisconsin and who see their work as part of a "greater good".

Benefits. An investment manager hired under the salary structure described by Mr. Garcia would qualify for pension benefits through the PERA system, with a cap on those benefits.

A member expressed concern over portions of the PERA system that allow pensions to be paid for as long as 80 years.

Audits. PERA audits are public documents and are presented to the PERA board. Internal management is included in the audits.

Investment managers. The Public Employees Retirement Board Investments Committee would evaluate the performance of PERA investment managers hired for internal management, and the legislature would evaluate the overall value added by incorporating internal management.

A member spoke in favor of having the state's higher education institutions assume a role in cultivating in-state investment manager talent.

EnnisKnupp report. Mr. Garcia noted that he has incorporated some of the recommendations from the EnnisKnupp report into his suggestions for the PERA.

- Mr. Garcia agreed to provide a copy of fiduciary responsibility contractual obligations in PERA contracts with investment managers.
- Mr. Propst agreed to provide information and totals for investment performance with reduced and "right-sized" return assumptions.

Educational Retirement Board (ERB)

Jan Goodwin, executive director, ERB; Bob Jacksha, chief investment officer, ERB; and Roderick Ventura, general counsel, ERB, reported on the ERB's actuarial valuation, transparency and financial reporting and presented a piece of legislation for the committee's endorsement.

As reported on its GASB Statement 67 for June 30, 2017, the ERB's unfunded liability totaled $7.4 billion, up from $6.6 billion a year prior, and its assets totaled $12.5 million, up from $11.5 million a year prior. ERB active membership totaled 59,495, while retired members receiving benefits totaled 47,340. Active membership has dropped steadily since 2009 and is currently at the same level as it was in 2000. The number of members receiving benefits is climbing at rate of about 2,000 per year. FY 2017 contributions totaled $692 million while benefits distributions topped $1 billion; the difference was made up through investment earnings. Fund solvency is projected at 61 years, based on lower costs for future members, lower cost-of-living adjustments and the current market value of assets.

Ms. Goodwin noted that the rating agency Standard & Poor's does not foresee significant credit rating changes based solely on the change in GASB reporting requirements. One change involved with the new reporting, however, is that the ERB now uses a 5.9 percent "blended" discount rate for projections that incorporates lower assumptions for inflation, wage growth and contributions. The ERB used a 7.75 percent discount rate prior to FY 2017.

The ERB's website provides public access to information on ERB meetings, policies, strategic planning, investments, reports, studies, benefits and publications.

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

Portfolio. Since its inception, the ERB portfolio's annual return has averaged 9.1 percent. Its 20-year return is 6.4 percent because of the economic downturns in 2001 and 2008 to 2009. Investment management fees are disclosed annually in the ERB financial reports and are provided to the LFC. The portfolio's hedge fund allocation can be misleading because the investment industry does not have a standard definition of what constitutes a hedge fund.

Cash flow. The ERB net cash flow was negative three percent in FY 2017 and is not projected to go lower than negative five percent in the future.

ERB vacancy. An open gubernatorial appointee seat on the ERB has not been filled.

Reporting. New GASB reporting requirements for ERB employers, including expanded audit requirements, have been going smoothly and are not affecting operations or cash flow.

The GASB requires that long-term earnings assumptions be calculated in the same manner across all pension plans; however, the discount rate for each plan is determined by the asset classifications unique to that plan.

Mr. Ventura presented a bill draft that addresses concerns over cybersecurity threats by amending the Open Meetings Act and the IPRA to allow public bodies to discuss certain network security issues in a non-public, confidential setting. In discussion, members discussed the need to create security standards for personnel as well. On a motion duly made, seconded and unanimously adopted, the committee endorsed the ERB's proposed bill (208940.1SA).

- Ms. Goodwin agreed to provide the total cost of service purchases by ERB members.

Minutes

On a motion duly made, seconded and unanimously adopted, the minutes from the October 19-20, 2017 meeting were approved with the following change: on page 5, paragraph 4, final line, "might" was replaced with "would".

State Investment Council (SIC)

Steven K. Moise, state investment officer, SIC; Robert "Vince" Smith, deputy state investment officer, SIC; and Charles Wollmann, director of communications, SIC, outlined the SIC's transparency practices.

Since 2010, the SIC has instituted transparency improvements in its policies, practices, reporting, public access and public outreach. The SIC and its staff and consultants vet all investment managers prior to hiring. Investments are considered and approved in a public forum, and the state investment officer is no longer authorized to make unilateral investment decisions. All SIC policies and reports are posted either on the SIC website or on the Sunshine Portal website, and all meetings are webcast on the governor's website. The annual investment plan, which is reviewed by industry professionals, is also posted on the SIC's website and may be revised for greater public accessibility in the coming year. Requests for information from the public and the press, including IPRA requests, receive prompt responses.

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

Pay-to-play scandal. Mr. Wollmann described the amount that the SIC is trying to recover from its pay-to-play scandal of a decade ago as being "in the tens of millions of dollars"; however, the amount cannot be precisely calculated at this time. The law firm Day Pitney LLP is charging a 20 percent contingency fee on recovered funds.

The SIC has sued multiple individuals and entities in the matter and recently received a favorable ruling in district court in its proceedings against Gary Bland, former state investment officer. The court, rather than the SIC, assigns the recovery amount to be pursued in each case. A report by the Paul Hastings LLP law firm on the issue is not public information but will be released to the public when the litigation is settled.

Transparency. Mr. Wollmann made available a brief written summary of SIC investment policies and a "trustee fiduciary duty of responsibility" statement, which were distributed to members.

Members expressed concern that SIC members who refused to sign a pledge of loyalty to the investment funds are now excluded from executive sessions and certain SIC deliberations and decisions. The presenters and members discussed the loyalty pledge in relation to SIC member fiduciary responsibilities. Mr. Moise stated that no lawsuit has been filed against the SIC by an SIC member.

SIC employee settlement. An issue with a female SIC employee over equal pay was settled. The SIC is prohibited from discussing the details of the settlement.

- Mr. Smith agreed to provide the SIC investment policy manual.

Adjournment

There being no further business, the committee adjourned at 4:00 p.m.

ENDORSED LEGISLATION

_____ BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

DISCUSSION DRAFT

ENDORSED BY THE INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

AN ACT

RELATING TO PUBLIC INFORMATION; EXEMPTING FROM PUBLIC DISCLOSURE CERTAIN INFORMATION CONCERNING PUBLIC SECURITY.

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

SECTION 1. Section 10-15-1 NMSA 1978 (being Laws 1974, Chapter 91, Section 1, as amended) is amended to read:

"10-15-1. FORMATION OF PUBLIC POLICY--PROCEDURES FOR OPEN MEETINGS--EXCEPTIONS AND PROCEDURES FOR CLOSED MEETINGS.--

A. In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them. The formation of public policy or the conduct of business by vote shall not be

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conducted in closed meeting. All meetings of any public body except the legislature and the courts shall be public meetings, and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings. Reasonable efforts shall be made to accommodate the use of audio and video recording devices.

B. All meetings of a quorum of members of any board, commission, administrative adjudicatory body or other policymaking body of any state agency or any agency or authority of any county, municipality, district or political subdivision, held for the purpose of formulating public policy, including the development of personnel policy, rules, regulations or ordinances, discussing public business or taking any action within the authority of or the delegated authority of any board, commission or other policymaking body are declared to be public meetings open to the public at all times, except as otherwise provided in the constitution of New Mexico or the Open Meetings Act. No public meeting once convened that is otherwise required to be open pursuant to the Open Meetings Act shall be closed or dissolved into small groups or committees for the purpose of permitting the closing of the meeting.

C. If otherwise allowed by law or rule of the public body, a member of a public body may participate in a meeting of the public body by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person; provided that each member participating by conference telephone can be identified when speaking, all participants are able to hear each other at the same time and members of the public attending the meeting are able to hear any member of the public body who speaks during the meeting.

D. Any meetings at which the discussion or adoption of any proposed resolution, rule, regulation or formal action occurs and at which a majority or quorum of the body is in attendance, and any closed meetings, shall be held only after reasonable notice to the public. The affected body shall determine at least annually in a public meeting what notice for a public meeting is reasonable when applied to that body. That notice shall include broadcast stations licensed by the federal communications commission and newspapers of general circulation that have provided a written request for such notice.

E. A public body may recess and reconvene a meeting to a day subsequent to that stated in the meeting notice if, prior to recessing, the public body specifies the date, time and place for continuation of the meeting and, immediately following the recessed meeting, posts notice of the date, time and place for the reconvened meeting on or near the door of the place where the original meeting was held and in at least one other location appropriate to provide public notice of the continuation of the meeting. Only matters appearing on the agenda of the original meeting may be discussed at the reconvened meeting.

F. Meeting notices shall include an agenda containing a list of specific items of business to be discussed or transacted at the meeting or information on how the public may obtain a copy of such an agenda. Except in the case of an emergency or in the case of a public body that ordinarily meets more frequently than once per week, at least seventy-two hours prior to the meeting, the agenda shall be available to the public and posted on the public body's [~~web site~~] website, if one is maintained. A public body that ordinarily meets more frequently than once per week shall post a draft agenda at least seventy-two hours prior to the meeting and a final agenda at least thirty-six hours prior to the meeting. Except for emergency matters, a public body shall take action only on items appearing on the agenda. For purposes of this subsection, "emergency" refers to unforeseen circumstances that, if not addressed immediately by the public body, will likely result in injury or damage to persons or property or substantial financial loss to the public body. Within ten days of taking action on an emergency matter, the public body shall report to the attorney general's office the action taken and the circumstances creating the emergency; provided that the requirement to report to the attorney general is waived upon the declaration of a state or national emergency.

G. The board, commission or other policymaking body shall keep written minutes of all its meetings. The minutes shall include at a minimum the date, time and place of the meeting, the names of members in attendance and those absent, the substance of the proposals considered and a record of any decisions and votes taken that show how each member voted. All minutes are open to public inspection. Draft minutes shall be prepared within ten working days after the meeting and shall be approved, amended or disapproved at the next meeting where a quorum is present. Minutes shall not become official until approved by the policymaking body.

H. The provisions of Subsections A, B and G of this section do not apply to:

(1) meetings pertaining to issuance, suspension, renewal or revocation of a license, except that a hearing at which evidence is offered or rebutted shall be open. All final actions on the issuance, suspension, renewal or revocation of a license shall be taken at an open meeting;

(2) limited personnel matters; provided that for purposes of the Open Meetings Act, "limited personnel matters" means the discussion of hiring, promotion, demotion, dismissal, assignment or resignation of or the investigation or consideration of complaints or charges against any individual public employee; provided further that this paragraph is not to

be construed as to exempt final actions on personnel from being taken at open public meetings, nor does it preclude an aggrieved public employee from demanding a public hearing. Judicial candidates interviewed by any commission shall have the right to demand an open interview;

(3) deliberations by a public body in connection with an administrative adjudicatory proceeding. For purposes of this paragraph, "administrative adjudicatory proceeding" means a proceeding brought by or against a person before a public body in which individual legal rights, duties or privileges are required by law to be determined by the public body after an opportunity for a trial-type hearing. Except as otherwise provided in this section, the actual administrative adjudicatory proceeding at which evidence is offered or rebutted and any final action taken as a result of the proceeding shall occur in an open meeting;

(4) the discussion of personally identifiable information about any individual student, unless the student or the student's parent or guardian requests otherwise;

(5) meetings for the discussion of bargaining strategy preliminary to collective bargaining negotiations between the policymaking body and a bargaining unit representing the employees of that policymaking body and collective bargaining sessions at which the policymaking body and the representatives of the collective bargaining unit are

present;

(6) that portion of meetings at which a decision concerning purchases in an amount exceeding two thousand five hundred dollars ($2,500) that can be made only from one source is discussed and that portion of meetings at which the contents of competitive sealed proposals solicited pursuant to the Procurement Code are discussed during the contract negotiation process. The actual approval of purchase of the item or final action regarding the selection of a contractor shall be made in an open meeting;

(7) meetings subject to the attorney-client privilege pertaining to threatened or pending litigation in which the public body is or may become a participant;

(8) meetings for the discussion of the purchase, acquisition or disposal of real property or water rights by the public body;

(9) those portions of meetings of committees or boards of public hospitals where strategic and long-range business plans or trade secrets are discussed; [~~and~~]

(10) that portion of a meeting of the gaming control board dealing with information made confidential pursuant to the provisions of the Gaming Control Act; <u>and</u>

<u>(11) those portions of meetings addressing:</u>

<u>(a) security assessments or deployments of information resources technology;</u>

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<u>(b) network security information; or</u>

<u>(c) the deployment, or a specific occasion for the implementation, of security personnel, critical infrastructure or security devices</u>.

I. If any meeting is closed pursuant to the exclusions contained in Subsection H of this section:

(1) the closure, if made in an open meeting, shall be approved by a majority vote of a quorum of the policymaking body; the authority for the closure and the subject to be discussed shall be stated with reasonable specificity in the motion calling for the vote on a closed meeting; the vote shall be taken in an open meeting; and the vote of each individual member shall be recorded in the minutes. Only those subjects announced or voted upon prior to closure by the policymaking body may be discussed in a closed meeting; or

(2) if a closure is called for when the policymaking body is not in an open meeting, the closed meeting shall not be held until public notice, appropriate under the circumstances, stating the specific provision of the law authorizing the closed meeting and stating with reasonable specificity the subject to be discussed is given to the members and to the general public.

J. Following completion of any closed meeting, the minutes of the open meeting that was closed or the minutes of the next open meeting if the closed meeting was separately scheduled shall state that the matters discussed in the closed meeting were limited only to those specified in the motion for closure or in the notice of the separate closed meeting. This statement shall be approved by the public body under Subsection G of this section as part of the minutes."

SECTION 2. Section 14-2-1 NMSA 1978 (being Laws 1947, Chapter 130, Section 1, as amended) is amended to read:

"14-2-1. RIGHT TO INSPECT PUBLIC RECORDS--EXCEPTIONS.--

A. Every person has a right to inspect public records of this state except:

(1) records pertaining to physical or mental examinations and medical treatment of persons confined to an institution;

(2) letters of reference concerning employment, licensing or permits;

(3) letters or memoranda that are matters of opinion in personnel files or students' cumulative files;

(4) law enforcement records that reveal confidential sources, methods, information or individuals accused but not charged with a crime. Law enforcement records include evidence in any form received or compiled in connection with a criminal investigation or prosecution by a law enforcement or prosecuting agency, including inactive matters or closed investigations to the extent that they contain the

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information listed in this paragraph;

(5) as provided by the Confidential Materials Act;

(6) trade secrets, attorney-client privileged information and long-range or strategic business plans of public hospitals discussed in a properly closed meeting;

(7) tactical response plans or procedures prepared for or by the state or a political subdivision of the state, the publication of which could reveal specific vulnerabilities, risk assessments or tactical emergency security procedures that could be used to facilitate the planning or execution of a terrorist attack; [~~and~~]

(8) confidential electronic network security information:

(a) revealing components, including passwords, personal identification numbers, access codes and encryption, of a public body's electronic network security system;

(b) collected, assembled or maintained by or for a public body to prevent, detect or investigate criminal or fraudulent activity; or

(c) concerning an assessment, made by, made for or maintained by a public body, of the vulnerability of the network to criminal activity; and

[~~(8)~~] (9) as otherwise provided by law.

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B. Protected personal identifier information contained in public records may be redacted by a public body before inspection or copying of a record. The presence of protected personal identifier information on a record does not exempt the record from inspection. Unredacted records that contain protected personal identifier information shall not be made available on publicly accessible [~~web sites~~] websites operated by or managed on behalf of a public body."

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