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January 20, 2014

MEMORANDUM

TO: Legislative Education Study Committee

FR: Kevin Force

RE: STAFF BRIEF: ADMINISTRATIVE RULEMAKING

Adopted Rules:

2.82.1 Public Finance, Educational Retirement, General Provisions
2.82.8 Public Finance, Educational Retirement, Investment Policy and Practices

The December 30, 2013 issue of the *New Mexico Register* contained the final adoption of amendments to two sections of the Educational Retirement Board (ERB) rules. The Public Comment Notice was published on the New Mexico Educational Retirement Board website¹ on May 7, 2013, soliciting public comment on the proposed rule, from the period of May 7, 2013 to June 7, 2013. (See Attachment 1, *Public Comment Notice, Proposed ERB Rule 2.82.1 – General Provisions, and 2.82.8 – Investment Policies and Practices, 5/07/13*, Attachment 2, *Proposed Amendments to 2.82.1.14 NMAC – General Provisions; Investment Committee, and 2.82.8.8 NMAC – Investment Policy and Practices; Investment Committee, 5/07/13*).

2.82.1.14 Public Finance, Educational Retirement, General Provisions, Investment Committee

The adopted rule would change the composition of the ERB Investment Committee. Currently, the committee is composed of:

¹ http://www.nmerb.org/News_stories.html

- the Executive Director of the ERB;
- the Chairman of the ERB; and
- two additional members of the Board, appointed by the Chairman.

The adopted rule removes the ERB Executive Director from the Board, and replaces him or her with a third member of the board, also appointed by the Director. The amended subsection now reads, in its entirety:

“The investments of the retirement fund shall be under the immediate direction of an investment committee composed of the chairman of the board, and three members of the board appointed by the chairman and approved by the board, for terms of one (1) year. The appointments by the chairman shall take place at the board’s regular October meeting each year. In the event of a vacancy on the committee, the chairman may appoint a member of the board to serve for the remaining portion of the one (1) year term. The appointment shall become effective immediately; provided, however, that it shall be subject to the approval by the board at its first meeting occurring after said appointment. The actions of the committee shall be subject to applicable statutes governing investment of the educational retirement fund, and the administrative rules and policies adopted by the board relating to investments of the fund.” (See Attachment 3, *Adopted Rule, 8.28.1.14 NMAC, 12/30/13*)

2.82.8.8 Public Finance, Educational Retirement, Investment Policies and Practices, Investment Committee

The adopted amendment simply changes the current wording of the subsection to reflect the changes adopted in 2.82.1 NMAC, Educational Retirement, General Provisions, as noted above, so that the pertinent subparagraph now reads:

“A. The investment committee shall be composed as set forth in 2.82.1.14 NMAC.” (See Attachment 4, *Adopted Rule 8.28.8.8 NMAC, 12/30/13*)



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**PUBLIC COMMENT PERIOD
ERB RULE 1.14 – INVESTMENT COMMITTEE (2.82.1.14 NMAC)
AND
ERB RULE 8.8 – INVESTMENT COMMITTEE (2.82.8.8 NMAC)**

The Educational Retirement Board (the “Board”) is asking for public comment on the attached draft revision to ERB Rule 1.14 (formally Rule 1.13) and Rule 8.8. Both revisions relate to the composition of the New Mexico Educational Retirement Board’s Investment Committee (“the Investment Committee”).

Currently the Investment Committee is made up of the NMERB Executive Director, the Chairman of the New Mexico Educational Retirement Board and two members of the Board, appointed by the Chairman. The proposed change would remove the Executive Director from the Investment Committee and replace him or her with a third member from the Board, also appointed by the Chairman.

This proposed change is supported by the findings of the EnnisKnupp Report of February 10, 2010 which noted that NMERB’s current practice of placing its Executive Director as a voting member of the Board’s Investment Committee blurred the line between Board governance and management and, as such, was not recommended.

The proposed change also sets forth the manner in which vacancies on the Investment Committee are to be filled. The current rule does not provide guidelines for filling such vacancies.

The ERB looks forward to receiving your comments on the revised Rule 1.14 and Rule 8.8. Comments should be e-mailed to rulechange@nmerb.org by 5 pm on June 7, 2013.

ATTACHMENT 2

Attachment '1'

Proposed Amendments to Rule 2.82.1.13 and Rule 2.82.8.8 NMAC

2.82.1.14 INVESTMENT COMMITTEE: The investments of the retirement fund shall be under the immediate direction of an investment committee composed of the ~~director, the~~ chairman of the board, and ~~three-two~~ three members of the board appointed by the chairman, and approved by the board, for terms of one year. The appointments by the chairman shall take place at the board's regular October meeting each year. In the event of a vacancy on the committee, the chairman may appoint a member of the board to serve for the remaining portion of the one year term. The appointment shall become effective immediately; provided however, that it shall be subject to approval by the board at its first meeting occurring after said appointment. The actions of ~~this~~ the committee shall be ~~governed by~~ subject to the statutes governing investment of the educational retirement fund, and by the administrative rules and regulations policies adopted by the board relating to investments of the fund.

2.82.8.8 INVESTMENT COMMITTEE:

A. The investment committee shall be composed as set forth in 2.82.1.13 NMAC ~~of the chairman who shall be an ex-officio member, two members of the board who shall be appointed by the chairman and approved by the board for a term of one year, and the director.~~

This is an amendment to 2.82.1 NMAC, Section 14, effective 12-30-13.

2.82.1.14 INVESTMENT COMMITTEE: The investments of the retirement fund shall be under the immediate direction of an investment committee composed of the [~~director, the~~] chairman of the board, and [~~two~~] three members of the board appointed by the chairman and approved by the board, for terms of one (1) year. The appointments by the chairman shall take place at the board's regular October meeting each year. In the event of a vacancy on the committee, the chairman may appoint a member of the board to serve for the remaining portion of the one (1) year term. The appointment shall become effective immediately; provided, however, that it shall be subject to approval by the board at its first meeting occurring after said appointment. The actions of [~~this~~] the committee shall be [~~governed by~~] subject to the applicable statutes governing investment of the educational retirement fund, and [by] the administrative rules and [regulations] policies adopted by the board relating to investments [~~adopted by the board~~] of the fund.

[2.82.1.14 NMAC - Rp, 2.82.1.13 NMAC, 11-15-12; A, 12-30-13]

This is an amendment to 2.82.8 NMAC, Section 8, effective 12-30-13.

2.82.8.8 INVESTMENT COMMITTEE:

A. The investment committee shall be composed ~~[of the chairman who shall be an ex-officio member, two members of the board who shall be appointed by the chairman and approved by the board for a term of one year, and the director]~~ as set forth in 2.82.1.14 NMAC.

B. The investment committee shall meet regularly each calendar quarter with additional meetings as required. The committee shall elect a chairman annually who shall call special meetings and preside at all meetings. Three members of the committee shall constitute a quorum.

C. The investment committee shall have the following responsibilities:

(1) to review all actions taken by the investment division in the management of the fund and recommend to the board specific action with regard to the continuation or change in the investment practices of the investment vision;

(2) to review on a continuing basis the investment philosophy and investment guidelines of the fund, make policy recommendations to the board and generally oversee the investment activities of the fund;

(3) to recommend the employment of the services of an investment advisory firm to assist and advise the board in the management of the fund;

(4) to recommend the employment of the services of investment management firm(s) to manage a portion of the assets of the fund, either through separately managed accounts or through individual, common or collective trust funds;

(5) to establish asset allocation guidelines, which shall define asset allocation targets and ranges, and to annually review/modify these guidelines; as set forth in the ERB investment objectives and guidelines which shall be approved by the investment committee and recommended for board approval.

D. The investment committee may at any time withdraw the authority of the investment division to execute orders on behalf of the fund. Authority cannot be denied retroactively.

E. Investment committee members may attend and participate in any regular or special investment committee meeting by telephone or other electronic device only if:

(1) the member cannot attend the meeting due to an emergency or unforeseen circumstance;

(2) the member's voice can clearly be heard by everyone in attendance of the meetings and the member clearly identifies himself before speaking or participating in a vote;

(3) the member has not attended regular meetings electronically more than four times in a rolling twelve month period;

(4) no more than two members who otherwise qualify for participation under this section may do so at the same meeting; and

(5) the member otherwise complies with the Open Meetings Act.

[6-30-99; 2.82.8.8 NMAC - Rn, 2 NMAC 82.8.8, 1-30-2004; A, 12-30-2013]