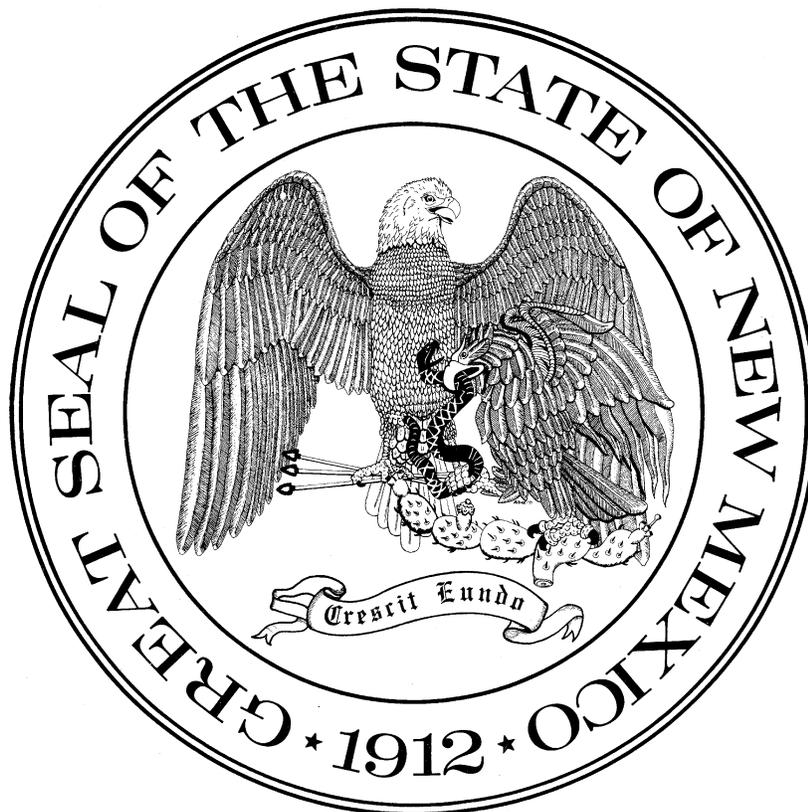


INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

2013 INTERIM

FINAL REPORT



**New Mexico Legislative Council Service
Santa Fe, New Mexico
February 2014**

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COMMITTEE MEMBERSHIP, WORK PLAN AND MEETING SCHEDULE

**2013 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE**

The Investments and Pensions Oversight Committee (IPOC) was created by the New Mexico Legislative Council on April 30, 2013. Committee members are as follows:

Members

Rep. Jim R. Trujillo, Chair
Sen. George K. Munoz, Vice Chair
Sen. Sue Wilson Beffort
Sen. Jacob R. Candelaria
Rep. Larry A. Larrañaga
Sen. Carroll H. Leavell
Sen. Steven P. Neville

Sen. Bill B. O'Neill
Rep. Jane E. Powdrell-Culbert
Rep. William "Bill" R. Rehm
Rep. Henry Kiki Saavedra
Sen. William P. Soules
Rep. Luciano "Lucky" Varela

Advisory Members

Rep. Donald E. Bratton
Sen. Carlos R. Cisneros
Rep. Miguel P. Garcia
Rep. Roberto "Bobby" J. Gonzales
Rep. William "Bill" J. Gray
Sen. Stuart Ingle
Rep. Emily Kane

Sen. Timothy M. Keller
Rep. Tim D. Lewis
Rep. Patricia A. Lundstrom
Sen. William H. Payne
Sen. John C. Ryan
Sen. Michael S. Sanchez
Rep. Sheryl Williams Stapleton

Work Plan

During the 2013 interim, the IPOC will:

(1) receive reports from the Educational Retirement Board (ERB) and the Public Employees Retirement Association (PERA) on current projections, for each member plan, related to the solvency of the pension funds and changes in the retirement plans resulting from legislation enacted during the 2013 legislative session;

(2) receive testimony from the ERB, the PERA and the Retiree Health Care Authority and, as deemed necessary, their actuaries, employee representatives, fiscal experts and others regarding the status of the applicable funds and investments;

(3) receive testimony from the PERA, the Administrative Office of the Courts and employee representatives on potential changes to the Judicial Retirement Act and the Magistrate Retirement Act, based on current projections of solvency of those pension plans;

(4) receive reports from the appropriate agencies and staff regarding the state's capital outlay expenditures and process;

(5) receive reports from the Office of the Attorney General, private plaintiffs or others regarding the progress of current litigation and of potential claims by the state and the funds regarding "pay-to-play" allegations and investment fraud, etc.;

(6) examine the performance of the investment portfolios of the State Investment Council (SIC), the PERA and the ERB and funds in the state treasury in absolute terms and compared to policy benchmarks and comparable funds. This would include the returns on the entire portfolio, as well as the return on individual segments, including stocks, bonds, real estate and private equity;

(7) receive reports from the SIC related to the programs of the SIC aimed at enhancing the economic development in the state;

(8) receive testimony on the investment policies, practices and returns of the economically targeted investment programs of the SIC, particularly the Private Equity Investment Advisory Committee, the Small Business Investment Corporation and the film loan program;

(9) review the manner in which investment policy and associated earning benchmarks were set for the investment funds by the governing bodies and investigate how each agency determines the proportional mix of types of investments, including mutual stock and bond funds, individual stocks and bonds, real estate and private equity, etc. The IPOC will focus on how investment policies for the retirement funds have changed in response to changes in projections regarding program solvency and unfunded liabilities;

(10) receive reports from the Education Trust Board regarding all investment earnings and the 529 College Savings Plan program operations; and

(11) receive reports from the PERA regarding the legislative retirement plans.

**Investments and Pensions Oversight Committee
2013 Approved Meeting Schedule**

<u>Date</u>	<u>Location</u>
June 6	Santa Fe
July 10	Santa Fe
August 9	Santa Fe
September 9	Santa Fe
October 16	Santa Fe
November 7	Santa Fe

**Report of the Investments and
Pensions Oversight Committee:
Summary**

INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE 2013 SUMMARY

Introduction

A legislatively created interim committee, the Investments and Pensions Oversight Committee (IPOC) met six times during the 2013 interim at the State Capitol in Santa Fe. Legislative oversight of investments and pensions began in 2003 with the creation of the State Permanent Fund Task Force by Senate Joint Memorial 14 and continued pursuant to Senate Joint Memorial 13 of the 2005 session. House Bill 212 of the 2006 session would have created a committee much like the IPOC; however, Governor Bill Richardson pocket-vetoed that measure. Still concerned about the solvency of state retirement funds, the New Mexico Legislative Council created the IPOC in 2006 and its successors each year after that. During the 2013 interim, the IPOC focused on the solvency of the trust funds of the Public Employees Retirement Association (PERA) board, the Educational Retirement Board (ERB) and the Retiree Health Care Authority (RHCA). The committee also focused on changes in the retirement plans resulting from legislation enacted during the 2013 session, as well as the investment functions of the PERA, the ERB and the State Investment Council (SIC). The oversight of PERA, ERB and SIC investment functions included not only an examination of overall investment policies and returns but also testimony on the progress of current or pending litigation involving the state's investment or pension funds and testimony on and a discussion of the impact of new Governmental Accounting Standards Board (GASB) pension-reporting requirements.

Summary of Committee Activity

The IPOC received testimony from the PERA, ERB and RHCA on their increasing respective unfunded liabilities and, in cooperation with the agencies, developed legislative proposals to ensure the long-term solvency of their respective funds. The IPOC also took testimony from accounting and bond market experts on the potential impact of increasing unfunded pension and retiree health care liabilities on New Mexico's state finances and bond ratings.

The IPOC took testimony at its June 6 meeting from the SIC on recent investment performance and policy and governance development changes. The committee heard that the permanent funds managed by the SIC have grown more than \$3.9 billion in the past three years, with a total asset value of nearly \$18 billion. Also, investment returns of the Land Grant Permanent Funds (LGPF) and the Severance Tax Permanent Fund (STPF) have rebounded in the past two fiscal years.

The RHCA executive director reported that all stakeholders have contributed to an improved financial outlook for the plan through increased pre-Medicare plan deductibles and increased out-of-pocket maximums. Medicare supplement plans now require all members to pay the Medicare Part B deductible, and all prescription plans have shifted to having members pay a percentage of total costs. Increased retiree health care premiums averaging eight percent

annually and continued increases in contribution levels for active employees and employers have contributed to revenue enhancement. The fund's solvency has been extended to 2029, with continued implementation of plans to extend the fund's solvency to 2043. Meanwhile, changes to the system have not decreased access to health care, and preventive care is still fully covered with the state's funding level ranked fourteenth in the nation.

The IPOC heard testimony that the PERA fund has grown 15.7 percent since the beginning of fiscal year 2013 and was valued at \$13.3 billion in April 2013. PERA officials also discussed the changes brought about by amendments to PERA statutes, including cost-of-living adjustment (COLA) reductions and eligibility changes, retirement eligibility, vesting period and pension benefit changes for new employees and increases in employee and employer contribution rates. The IPOC also heard testimony that the Educational Retirement Fund had a market value of \$10.2 billion as of March 31, 2013, with investment of the fund returning 11.2 percent thus far in fiscal year 2013, putting the 10-year average at 8.8 percent.

At its July 10 meeting, the IPOC received a report from the chief economist of the Legislative Finance Committee (LFC) on PERA, ERB and SIC asset allocation strategies and investment returns. The IPOC learned that comparison to a defined peer group is an appropriate measurement of a policy allocation benchmark and that, according to the LFC report, PERA's policy allocation returned 1.24 percent less than the median fund, while the SIC's policy allocation returned .02 percent below the median fund and the ERB's policy allocation returned 1.52 percent below the median fund. The IPOC heard testimony from chief investment officers of the PERA, ERB and SIC on their recent investment performance and strategies to meet long-term earnings benchmarks.

At its August 9 meeting, the IPOC received presentations from LFC and Legislative Council Service staff on the process for selecting and funding statewide and local capital outlay projects. They also presented recommended legislative guidelines for selecting local capital outlay projects. IPOC members engaged in an extensive discussion on concerns about the executive order that put a number of projects on hold because of audit issues.

Also at the August meeting, the IPOC received reports from the SIC on economically targeted investments that the SIC supports; however, the SIC is now focused on investments that can bring market-rate returns to the STPF. A representative from Sun Mountain Capital discussed private equity investments of \$350 million that have been committed to 28 different venture capital funds that support New Mexico-based companies. Albuquerque Economic Development discussed "deal closing funds" and how they are used to attract economic development. The Small Business Investment Corporation provided an overview of its programs; the ERB presented an update on possible changes to the pension plan; the RHCA discussed possible statutory changes; and the Administrative Office of the Courts presented possible changes to the Judicial Retirement Act and the Magistrate Retirement Act.

At the September 9 meeting, IPOC members heard from the chair of the Education Trust Board that New Mexico's portfolios have performed better than those of most other states, and the Education Plan has performed slightly better than the Scholar's Edge Plan. Other reports included a look at the volunteer firefighters' retirement plan's eligibility, funding sources and solvency. The fund is in good shape, with a funded ratio of 167 percent, more than 5,000 active members and 633 retirees receiving a modest pension.

The IPOC also heard from a panel led by James B. Lewis, state treasurer, on the new GASB Statement No. 68, "Accounting and Financial Reporting for Pensions". According to panelists, the new rule has the possibility of affecting the rate received by the State Board of Finance when selling general obligation bonds or severance tax bonds because bond disclosure rates include calculated pension liabilities, causing the state to have to pay a higher interest rate when it sells bonds even though sales of those bonds have very little to do with the state's pension liabilities.

At the October 16 meeting, IPOC members took testimony from the LFC and Taxation and Revenue Department (TRD) on the funding of capital projects. The committee learned that senior severance tax bonding capacity is expected to decrease by \$38 million in 2014, to \$186 million. General obligation bond capacity, assuming a proposed flat mill levy, will be about \$165 million. The committee learned that many projects continue to be thwarted by not having sufficient funding to complete a phase. Many projects are underfunded by 80 percent to 90 percent and remain that way for years. TRD staff suggested a model of funding projects that prioritizes local financing first, followed by federal financing, then by state loans and last by state grants.

Members also heard a presentation from State Board of Finance staff on the severance tax bonding program and the STPF. Committee members learned that, since 1999, nearly all severance tax deposits (95 percent) have been used to back bonds for capital improvements, with only five percent being deposited to increase the STPF corpus.

The IPOC also heard from a large panel of speakers from the National Conference of State Legislatures, state and local agencies and state and local associations on legislative planning for the new GASB reporting requirements, with a focus on the impact on local governments.

At its November 7 meeting, the IPOC was primarily engaged in the consideration of draft legislation proposed for endorsement. The only informational items included new actuarial valuations and funding projections for the PERA, new actuarial valuations for the ERB and the recent investment performance of the SIC.

The committee adopted the following measures for endorsement for consideration by the 2014 legislature:

1. a joint resolution proposed by the SIC to preserve the LGPF by increasing the duty of care and restricting the type of investment that may be made;
2. amendments to the Retiree Health Care Act to incrementally increase contribution rates over a six-year period;
3. amendments to the Judicial Retirement Act to increase the solvency of the Judicial Retirement Fund by changing the age and service requirements for normal retirement; decreasing the pension multiplier for service credit earned after June 30, 2014; providing a temporary suspension of, decrease in and delay of the COLA; increasing the maximum pension benefit; and changing the pension form of payment;
4. amendments to the Magistrate Retirement Act provisions applicable to certain members to increase the solvency of the Magistrate Retirement Fund by changing the age and service requirements for normal retirement; decreasing the pension multiplier for service credit earned after June 30, 2014; providing a temporary suspension of, decrease in and delay of the COLA; increasing the maximum pension benefit; and changing the pension form of payment; and
5. an amendment to legislator retirement statutes to provide a minimum retirement age for legislative members of the PERA.

AGENDAS AND MINUTES OF MEETINGS

Revised: May 28, 2013

**TENTATIVE AGENDA
for the
FIRST MEETING IN 2013
of the
INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE**

**June 6, 2013
Room 322, State Capitol
Santa Fe, New Mexico**

Thursday, June 6

- 9:00 a.m. **Call to Order**
—Representative Jim R. Trujillo, Chair
- 9:05 a.m. (1) [Interim Committee Procedures](#)
—Raúl E. Burciaga, Director, Legislative Council Service (LCS)
- 9:25 a.m. (2) [Update on Recent Investment Performance and Investment Policy and Governance Developments: State Investment Council \(SIC\)](#)
—Steven Moise, State Investment Officer, SIC
—Vince Smith, Deputy State Investment Officer, SIC
- 10:45 a.m. (3) [Status Report on Actuarial Soundness of the New Mexico Retiree Health Care Authority \(NMRHCA\) Fund and Program Reform Proposals](#)
—Mark Tyndall, Executive Director, NMRHCA
- 12:00 noon **Lunch**
- 1:30 p.m. (4) [Status Report on Public Employees Retirement Association \(PERA\) Funds; Legislative Changes \(SB 27\); Report on Meetings Related to Judicial Retirement and Magistrate Retirement](#)
—Wayne Propst, Executive Director, PERA
- 3:00 p.m. (5) [Status Report on Educational Retirement Board \(ERB\) Fund and Legislative Changes \(SB 115\)](#)
—Jan Goodwin, Executive Director, ERB
- 4:00 p.m. (6) [2013 Interim Work Plan and Meeting Schedule Adoption](#)
—Claudia Armjio, Staff Attorney, LCS
- 5:00 p.m. **Adjourn**

Revised: July 9, 2013

**TENTATIVE AGENDA
for the
SECOND MEETING IN 2013
of the
INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE**

**July 10, 2013
Room 307, State Capitol
Santa Fe, New Mexico**

Wednesday, July 10

- 9:00 a.m. **Call to Order**
—Representative Jim R. Trujillo, Chair
- 9:05 a.m. **Approval of the June 6, 2013 Meeting Minutes**
- 9:10 a.m. (1) [Legislative Finance Committee \(LFC\) Overview of Asset Allocation Strategies and Investment Returns for the Public Employees Retirement Association \(PERA\), Educational Retirement Board \(ERB\) and State Investment Council \(SIC\)](#)
—Peter van Moorsel, Economist, LFC
- 10:00 a.m. (2) [PERA Recent Investment Performance and Strategy to Meet Long-Term Earnings Benchmark; and On-Budget and Off-Budget Asset Management Fees, Including Alternative Asset Fees](#)
—Joelle Mevi, Chief Investment Officer, PERA
- 11:15 a.m. (3) [ERB Recent Investment Performance and Strategy to Meet Long-Term Earnings Benchmark; and On-Budget and Off-Budget Asset Management Fees, Including Alternative Asset Fees](#)
—Bob Jacksha, Chief Investment Officer, ERB
- 12:30 p.m. **Lunch**
- 1:45 p.m. (4) [SIC Recent Investment Performance and Strategy to Meet Long-Term Earnings Benchmark; and On-Budget and Off-Budget Asset Management Fees, Including Alternative Asset Fees](#)
—Steven Moise, State Investment Officer, SIC
—Vince Smith, Deputy State Investment Officer, SIC
- 3:30 p.m. (5) [PERA Board Travel and PERA Overview and Status of the Legislative Retirement Plans](#)
—Wayne Propst, Executive Director, PERA
- 4:30 p.m. **Adjourn**

Revised: August 2, 2013

**TENTATIVE AGENDA
for the
THIRD MEETING IN 2013
of the
INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE**

**August 9, 2013
Room 309, State Capitol
Santa Fe, New Mexico**

Friday, August 9

- 9:00 a.m. **Call to Order**
—Representative Jim R. Trujillo, Chair
- 9:05 a.m. **Approval of July 10, 2013 Meeting Minutes**
- 9:10 a.m. (1) **Capital Outlay: Statewide and Local Overview**
—Sonya Snyder, Senior Fiscal Analyst, Legislative Finance Committee
—Kathleen Dexter, Researcher, Legislative Council Service
- 10:00 a.m. (2) **State Investment Council (SIC) Investment Policies, Practices and Returns of the Economically Targeted Investments; Sun Mountain Capital Report on Private Equity Programs; Albuquerque Economic Development Report on "Closing Funds" as Economic Tools**
—Steven K. Moise, State Investment Officer, SIC
—Vince Smith, Deputy State Investment Officer, SIC
—Sally Corning, Partner, Sun Mountain Capital
—Gary Tonjes, President, Albuquerque Economic Development
- 11:00 a.m. (3) **New Mexico Small Business Investment Corporation (SBIC) Programs Update**
—Russ Cummins, Executive Director and Investment Adviser, SBIC
—Joseph Badal, President and Chair, SBIC
- 12:30 p.m. **Lunch**
- 1:30 p.m. (4) **Educational Retirement Board (ERB) Update on Meetings With Stakeholders and Possible Changes to the Pension Plan; Update on Pending Litigation**
—Jan Goodwin, Executive Director, ERB
—Chris Schatzman, General Counsel, ERB

- 2:15 p.m. (5) [**New Mexico Retiree Health Care Authority \(RHCA\) — Post-Annual Board Meeting Update and Possible Statutory Changes**](#)
—Mark Tyndall, Executive Director, RHCA
- 3:00 p.m. (6) [**Judicial Retirement Act and Magistrate Retirement Act Potential Plan Solvency Changes, Report on Stakeholders' Input**](#)
—Arthur W. Pepin, Director, Administrative Office of the Courts (AOC)
—Oscar Arevalo, Chief Financial Officer, AOC
—Wayne Propst, Executive Director, Public Employees Retirement Association
- 4:30 p.m. **Adjourn**

Revised: September 6, 2013

**TENTATIVE AGENDA
for the
FOURTH MEETING IN 2013
of the
INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE**

**September 9, 2013
Room 322, State Capitol
Santa Fe, New Mexico**

Monday, September 9

- 9:00 a.m. **Call to Order**
—Representative Jim R. Trujillo, Chair
- 9:05 a.m. **Approval of the August 9, 2013 Meeting Minutes**
- 9:10 a.m. (1) **[Education Trust Board \(ETB\); New Mexico College Savings Plans Overview](#)**
—Dr. José Garcia, Chair, ETB
—Jeremy Thiessen, Investment Consultant, Pension Consulting Alliance
—Joseph Goldberg, Attorney, Freedman Boyd Hollander Goldberg Urias & Ward
—Kevin Deiters, Executive Director, ETB
- 10:30 a.m. (2) **[Volunteer Firefighters' Retirement Plan: Eligibility, Plan Funding Sources and Solvency](#)**
—Wayne Propst, Executive Director, Public Employees Retirement Association (PERA)
—Vernon Muller, Deputy State Fire Marshal
- 11:30 a.m. **Lunch**
- 1:00 p.m. (3) **[Panel Discussion on New Governmental Accounting Standards Board \(GASB\) Rules Regarding the Reporting of Unfunded Public Pension Liabilities and New Auditing Requirements](#)**
—James B. Lewis, State Treasurer, Moderator
—Jeff Bridgens, CPA, Moss Adams LLP, GASB Practice Fellow, AICPA State and Local Government Expert Panel
—David Buchholtz, Bond Disclosure Council, State Board of Finance
—John Garrett, Principal and Consulting Actuary, Cavanaugh MacDonald Consulting, LLC, and Actuary, PERA
- 4:00 p.m. **Public Comment**
- 4:15 p.m. **Adjourn**

Revised: October 15, 2013

**TENTATIVE AGENDA
for the
FIFTH MEETING IN 2013
of the
INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE**

**October 16, 2013
Room 307, State Capitol
Santa Fe, New Mexico**

Wednesday, October 16

- 9:00 a.m. **Call to Order**
—Representative Jim R. Trujillo, Chair
- 9:05 a.m. **Approval of the August 9, 2013 Meeting Minutes**
- 9:10 a.m. (1) **Capital and Overview of Capital Outlay Requests to Date; Water and Other Local Project Issues**
—Linda Kehoe, Legislative Finance Committee
—Ryan Gleason, Tax Policy and Research Director, Taxation and Revenue Department
- 10:40 a.m. (2) **Severance Tax Bonding Program and Severance Tax Bonding Fund**
—Stephanie Schardin Clarke, Director, State Board of Finance
- 11:30 a.m. **Lunch**
- 1:00 p.m. (3) **Presentations and Panel Discussion on Legislative Planning for New Governmental Accounting Standards Board Reporting Requirements with a Focus on the Impact on Local Governments**
—Jeff Hurley, National Conference of State Legislatures
—Paul Cassidy, Managing Director, RBC Capital Markets
—Bill Fulginiti, Executive Director, New Mexico Municipal League
—Katherine Miller, Santa Fe County Manager
—Marcos Tapia, Finance Director, City of Santa Fe
—Lou Hoffman, Finance Director, City of Albuquerque
—Jan Goodwin, Executive Director, Educational Retirement Board
—Wayne Propst, Executive Director, Public Employees Retirement Association
—Santiago Chavez, Finance Director, National Association of Counties
—Tito Chavez, Government Relations, New Mexico Association of Counties
- 4:00 p.m. **Public Comment**
- 4:15 p.m. **Adjourn**

Revised: November 6, 2013

**TENTATIVE AGENDA
for the
SIXTH MEETING
of the
INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE**

**November 7, 2013
Room 322, State Capitol
Santa Fe**

Thursday, November 7

- 9:00 a.m. **Call to Order**
—Representative Jim R. Trujillo, Chair
- Approval of the October 16, 2013 Meeting Minutes**
- 9:05 a.m. (1) **Recent Investment Performance of and Legislation Proposed by the State Investment Council (SIC)**
—Steven K. Moise, State Investment Officer, SIC
—Vince Smith, Deputy State Investment Officer, SIC
- 10:30 a.m. (2) **Educational Retirement Board (ERB) Implementation of New Governmental Accounting Standards Board Pension Reporting Rules; New Actuarial Valuations of the ERB**
—Jan Goodwin, Executive Director, ERB
- 11:30 a.m. **Lunch**
- 1:00 p.m. (3) **Legislation Proposed by the Retiree Health Care Authority (RHCA)**
—Mark Tyndall, Executive Director, RHCA
- 1:45 p.m. (4) **New Actuarial Valuations and Funding Projections of the Public Employees Retirement Association (PERA)**
—Wayne Propst, Executive Director, PERA
- 3:00 p.m. (5) **Legislation Proposed by the Administrative Office of the Courts (AOC)**
—Chief Justice Petra Jimenez Maes, New Mexico Supreme Court
—Arthur W. Pepin, Director, AOC

4:15 p.m. (6) [Legislation Proposed by Committee Members or Other Legislators for Consideration of Endorsement](#)
—Representative Miguel P. Garcia
—Senator Jacob R. Candelaria
—Senator Timothy M. Keller
—Claudia Armijo, Staff Attorney, Legislative Council Service

5:00 p.m. **Public Comment**

5:15 p.m. **Adjourn**

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

**June 6, 2013
Room 322, State Capitol
Santa Fe**

The first meeting of the Investments and Pensions Oversight Committee (IPOC) for the 2013 interim was called to order by Representative Jim R. Trujillo, chair, on Thursday, June 6, 2013, at 9:10 a.m. in Room 322, State Capitol, Santa Fe, New Mexico.

Present

Rep. Jim R. Trujillo, Chair
Sen. Sue Wilson Beffort
Sen. Jacob R. Candelaria
Rep. Larry A. Larrañaga
Sen. Carroll H. Leavell
Sen. Bill B. O'Neill
Rep. Jane E. Powdrell-Culbert
Rep. Henry Kiki Saavedra
Sen. William P. Soules
Rep. Luciano "Lucky" Varela

Advisory Members

Rep. Donald E. Bratton
Rep. Miguel P. Garcia
Rep. Roberto "Bobby" J. Gonzales
Rep. William "Bill" J. Gray
Rep. Tim D. Lewis
Sen. Mary Kay Papen
Rep. Sheryl Williams Stapleton

Staff

Claudia Armijo, Staff Attorney, Legislative Council Service (LCS)
Amy Chavez-Romero, Assistant Director for Drafting Services, LCS
Ric Gaudet, LCS

Guests

The guest list is in the meeting file.

Absent

Sen. George K. Munoz, Vice Chair
Sen. Steven P. Neville
Rep. William "Bill" R. Rehm

Sen. Carlos R. Cisneros
Sen. Stuart Ingle
Rep. Emily Kane
Sen. Timothy M. Keller
Rep. Patricia A. Lundstrom
Sen. William H. Payne
Sen. John C. Ryan
Sen. Michael S. Sanchez

Handouts

Handouts and other written testimony are in the meeting file.

Thursday, June 6

Interim Committee Procedures

Raúl E. Burciaga, director, LCS, gave the committee a briefing on legislative interim committee procedures. He discussed committee quorums, how the committee could function as a subcommittee if a quorum is not present, voting procedures and advisory member roles. He also briefly discussed the interim committee calendar and restrictions on committee meetings outside Santa Fe after September 30.

Update on Recent Investment Performance and Investment Policy and Governance Developments: State Investment Council (SIC)

Steven Moise, state investment officer, and Vince Smith, deputy state investment officer, presented to the committee a report on the activities and performance of the SIC. Since 2010, when the current state investment officer was hired, the SIC has made multiple reforms, resulting in a well-managed and -governed office with more reliable investment returns. Investment decisions, which previously were made only by the state investment officer, are now vetted and recommended by committee. The SIC is on target to complete its three-year asset transition plan, shifting from a high percentage of stock investment to a more balanced approach consisting of stocks, bonds and private investment focusing on income-producing assets. The SIC has also neared completion of its transition from 40 percent of its assets being internally managed to complete external management, which is expected to yield significantly better returns. SIC staff now focus mainly on asset allocation strategies and then let highly qualified firms manage the actual investment portfolio.

The permanent funds managed by the SIC have grown more than \$3.9 billion in the past three years, with a total asset value of nearly \$18 billion. There have been \$1.6 billion in contributions and \$2.3 billion in distributions during that time period. Mr. Moise reminded the committee that contributions to the Severance Tax Permanent Fund (STPF) have been very small in the past 10 years, compared with distributions from the fund. He expressed concern that unless contributions to the STPF increase, the fund will not grow its corpus in the long term. In order to increase distributions each year, the corpus of the fund also needs to grow. That goal cannot be accomplished solely by investment of the fund.

Investment returns of the Land Grant Permanent Funds (LGPF) have rebounded in the past two fiscal years, as have those of the STPF. However, over a 10-year period, both funds have lagged behind the national median performance of similar public funds. The STPF has the additional hindrance of being required to have a portion invested in local economic development investments, which historically have not performed as well as other investments.

The SIC has some legislative priorities for the 2014 legislative session, including proposing a constitutional amendment removing the outdated 15 percent cap on investment in international securities and improving the standard of care the SIC must use in investing assets. The SIC also wants to clean up some statutory language and repeal the unneeded Private Equity Investment Advisory Committee. The Investment Committee of the SIC should be responsible for all investment decisions, including private equity investments.

Committee members discussed with Mr. Moise and Mr. Smith various issues, including:

- the benefits of external asset management versus internal management;
- the impact of the decline of the natural gas industry in New Mexico on distributions to the LGPF, including the impact that local regulation of natural gas operations will have in the future;
- the nearly annual "sweep" by the legislature for other projects of revenue originally intended to be deposited into the STPF and the dedicated revenue streams for public school, tribal, colonias and water infrastructure projects;
- the need to increase investment in New Mexico venture capital assets;
- concern about removing the "state agency" designation of the SIC;
- the usefulness of investing SIC assets in local farming and ranching operations;
- possible negative impacts of making investments in regions governed by controversial free trade agreements; and
- the current weak market for investing in government bonds.

SIC staff were requested to provide the committee with a recent report of Sun Mountain Capital, relating to New Mexico venture capital, and a presentation given by Bob Grant, relating to the history of New Mexico's permanent funds.

Status Report on Actuarial Soundness of the New Mexico Retiree Health Care Authority (RHCA) Fund and Program Reform Proposals

Mark Tyndall, executive director, RHCA, presented to the committee a status report on the RHCA. The RHCA, established in 1990, was not prefunded like the Public Employees Retirement Association (PERA) and the Educational Retirement Board (ERB). The Retiree Health Care Fund has never been sufficiently funded, and by 2007, an actuarial analysis predicted that the fund would be exhausted by 2014 if changes were not made to the system. Unlike New Mexico's retirement systems, the RHCA has broad authority to make changes to the system, but does need statutory changes to change contribution rates. Since 2007, the RHCA has made many

changes to the retiree health care system, including increasing deductibles, making changes to pre-Medicare and Medicare supplement plans and making changes to prescription benefits pricing. Retiree premiums have also increased, in accordance with medical inflation rates. The legislature has increased employer and employee contribution rates, but the RHCA is seeking further increases in order to stabilize the fund.

Mr. Tyndall said that all stakeholders in the retiree health care system have contributed to its solvency. The fund's solvency period has been extended to 2029, and the board of the RHCA has approved a plan to increase that solvency through 2043. The changes to the system have not decreased access to health care, and preventative care is still fully covered. Cost increases to RHCA members have remained substantially below the national average, and the state's funding level has been ranked fourteenth best in the nation. The 2043 solvency plan includes phasing out family coverage subsidies for retirees with multiple dependent children, increasing the cost-sharing on prescription coverage, increasing the cost-sharing for pre-Medicare plans and increasing the employee and employer contribution rates.

Committee members discussed with Mr. Tyndall several issues, including:

- the fact that membership in the RHCA is not a property right, unlike the PERA and ERB;
- the fiscal impact on the RHCA of the federal Patient Protection and Affordable Care Act, totaling \$2 million in new fees in the next few fiscal years; increased federal revenue of \$6 million to cover the full cost of Medicare prescription benefits; and the need to change some plan benefits in 2018 to avoid the excise tax on certain plans; and
- the \$6 million funding from the federal government to subsidize the early retiree reinsurance program. Committee members questioned the wisdom of providing a one-month premium holiday for that program instead of spending the money elsewhere. Mr. Tyndall said that he would provide the committee with copies of the restrictive federal guidelines on how that money could be spent.

PERA Update

Patricia French, chair, PERA, and Wayne Propst, executive director, PERA, gave an update on the PERA fund and recent changes made to PERA legislation. The PERA fund has grown 15.7 percent since the beginning of the current fiscal year and was valued at \$13.3 billion in April 2013. The growth in the fund is primarily due to strength in global equity markets.

In 2013, the legislature made comprehensive changes to all public employee retirement plans in the PERA statutes. PERA staff have conducted numerous outreach meetings across the state and are in the process of sending correspondence to all PERA members to explain the changes. In addition, the Retirement Information Online (RIO) service is being reprogrammed,

tested and deployed in order to be ready for members by the July 1 effective date of the legislation.

Major changes in the PERA statutes include cost-of-living adjustment (COLA) reductions and eligibility changes, retirement eligibility, vesting period and pension benefit changes for new employees and increases in employee and employer contribution rates. For current members and retirees, changes include:

- reduction in the annual COLA from three percent to two percent, except for certain low-income disability retirees and retirees who worked for at least 25 years, which retirees will have their COLA reduced to 2.5 percent;
- a phased-in seven-calendar-year eligibility for early retirees to receive a COLA, with no change in COLA eligibility for those who retire at age 65 or older;
- a change in pension benefit calculations for those members who have service under multiple plans;
- an increase of the maximum pension benefit for most plans from 80 percent to 90 percent, designed to encourage increased years of service for members; and
- suspension of a COLA for return-to-work retirees during their period of reemployment.

For new members hired after July 1, 2013, changes include:

- an annual COLA of two percent, except for certain retirees;
- a seven-calendar-year eligibility for early retirees;
- a six-year vesting period for public safety members and an eight-year vesting period for all other members;
- a 0.5 percent reduction in the annual pension calculation factor and a maximum pension amount of 90 percent of final average salary;
- a blended pension calculation for members with service under multiple plans; and
- an increase in the age and service credit requirements for retirement for all plans.

Employee contribution rates will increase 1.5 percent beginning July 1, 2013, except for those employees earning less than \$20,000 annually in salary. Employer contribution rates will increase 0.4 percent beginning July 1, 2014.

Judicial retirement legislative changes passed by the legislature were vetoed by the governor. The PERA will try again in the 2014 legislative session to enact reforms to those plans, including additional COLA reform, increased contribution rates, reduction of the pension multiplier, an increased vesting period, an increased final average salary calculation period and elimination of the use of docket fees to pay for judicial retirement plans.

Committee members discussed many issues with PERA staff and board members, including:

- state employees will not see a decrease in their net pay, since they have been paying an additional 1.5 percent for several years. That increase, which had been scheduled to revert in fiscal year 2014, has been made permanent;
- the inequity between the employee and employer contribution rate increases;
- the need to reform the judicial retirement system; and
- the possibility that changes made to the PERA statutes will be considered by the courts as impinging on the property rights of public employees. PERA legal counsel believes that the changes made do not affect the "base benefit" of a public employee pension, and the legislature has the right to make changes to the retirement system to ensure the long-term viability of the system. Other people believe that a reduction in the COLA for current retirees and members negatively affects the property right that vested members have in the system, which property right is specifically protected by the Constitution of New Mexico.

ERB Update

Jan Goodwin, executive director, ERB, presented an update on legislative changes made to the educational retirement system. She mentioned that ERB members have always paid a significant portion of their benefits received, compared to members in the PERA system. The ERB worked with many of its stakeholders to reform the educational retirement system and got support from most stakeholders from the beginning. Significant changes to the educational retirement system made during the 2013 legislative session include:

- a reduction in the COLA of 10 percent for most retirees if the Educational Retirement Fund falls below a 90 percent funded ratio;
- an increase in the eligibility age for a COLA from 65 to 67 for new members;
- an increase in the employee contribution rate over two years. The employer contribution rate was already scheduled to increase in fiscal year 2014; and

- changes to the current two-tiered retirement eligibility system and the addition of a third tier for employees who begin service on or after July 1, 2013. Certain retirees will have significant benefit reductions if they retire before a certain age.

Ms. Goodwin briefly discussed the performance of the Educational Retirement Fund, which had a market value of \$10.2 billion on March 31. Investment of the fund has returned 11.2 percent thus far in fiscal year 2013, with a 10-year average return of 8.8 percent. The ERB has tried to reduce volatility of the fund by reducing its holding in stocks and increasing its interests in private equity and real estate.

Committee members discussed several issues with Ms. Goodwin, including:

- the legislature should look at the diversification of all of the state's retirement and permanent funds;
- retirees from the University of New Mexico feel that their property right to their pension has been diminished by the recent legislation; and
- teachers' wages have been effectively reduced in the past few years from increased employee contributions.

2013 Interim Work Plan and Meeting Schedule Adoption

Ms. Armijo discussed the proposed work plan for the committee during the 2013 interim. In addition to the written proposed work plan, committee members suggested some other areas of study, including a report on the actuarial soundness of certain marginal retirement plans and how to fix them; a report on the effect on the retirement system from a lawsuit seeking back pay for certain public employees; and a study of the actuarial soundness of the legislative retirement plans and possible reforms to the plans.

The committee adopted the proposed work plan, with the changes noted, without objection.

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

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

**July 10, 2013
Room 307, State Capitol
Santa Fe**

The second meeting of the Investments and Pensions Oversight Committee (IPOC) for the 2013 interim was called to order by Representative Jim R. Trujillo, chair, on Wednesday, July 10, 2013, at 9:10 a.m. in Room 322, State Capitol, Santa Fe, New Mexico.

Present

Rep. Jim R. Trujillo, Chair
Sen. George K. Munoz, Vice Chair
Sen. Jacob R. Candelaria
Rep. Larry A. Larrañaga
Sen. Steven P. Neville
Sen. Bill B. O'Neill
Rep. Jane E. Powdrell-Culbert
Rep. William "Bill" R. Rehm
Rep. Henry Kiki Saavedra
Sen. William P. Soules
Rep. Luciano "Lucky" Varela

Absent

Sen. Sue Wilson Beffort
Sen. Carroll H. Leavell

Advisory Members

Rep. Donald E. Bratton
Sen. Carlos R. Cisneros
Rep. Miguel P. Garcia
Rep. Roberto "Bobby" J. Gonzales
Sen. Stuart Ingle
Sen. Mary Kay Papen
Rep. Sheryl Williams Stapleton

Rep. William "Bill" J. Gray
Rep. Emily Kane
Sen. Timothy M. Keller
Rep. Tim D. Lewis
Rep. Patricia A. Lundstrom
Sen. William H. Payne
Sen. John C. Ryan
Sen. Michael S. Sanchez

Staff

Claudia Armijo, Staff Attorney, Legislative Council Service (LCS)
Amy Chavez-Romero, Assistant Director for Drafting Services, LCS
Pam Stokes, Staff Attorney, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Wednesday, July 10

Approval of Meeting Minutes

The committee, with no objections, approved the minutes from the IPOC meeting held on June 6, 2013.

Legislative Finance Committee (LFC) Overview of Asset Allocation Strategies and Investment Returns for the Public Employees Retirement Association (PERA), Educational Retirement Board (ERB) and State Investment Council (SIC)

Peter van Moorsel, economist, LFC, presented to the committee an overview of the general asset allocation strategies employed by the state's investment agencies, including the PERA, ERB and SIC. Mr. van Moorsel noted that the agencies' investment policies are shaped by their respective agency missions. For instance, the ERB and PERA manage pension funds, so their investment policies and target returns reflect obligations to their retirees. Alternatively, the SIC's investment policy and target returns reflect required annual distributions to fund beneficiaries.

Mr. van Moorsel indicated that asset allocation is an important component of the investment agencies' investment policies. Diversification of asset classes reduces risk in terms of return variability. The investment agencies generally conduct studies at least once every three years to determine whether their asset allocation strategies are consistent with the liabilities of the funds they manage.

The investment strategies of the agencies establish weights, benchmarks and ranges for the investment asset classes. The ERB and PERA require asset allocation plans expected to achieve an assumed overall rate of return on fund investments of 7.75 percent. The SIC's benchmark is 7.5 percent.

Mr. van Moorsel described the asset allocation targets adopted by the investment agencies. He stated that the PERA's policy requires the greatest investment in domestic and foreign equities, at 49 percent, while the ERB's policy requires the least exposure to equities, at 37 percent. Mr. van Moorsel pointed out that because the agencies have different strategies and different asset allocations, their policies include different benchmarks.

According to Mr. van Moorsel, an appropriate measurement of a policy allocation benchmark is comparison to a defined peer group. Mr. van Moorsel compared the funds' policy indices to the Wilshire Trust Universe Comparison Service median fund actual return. He said that the PERA's policy allocation returned 1.24 percent less than the median fund, while the SIC's policy allocation returned .02 percent below the median fund, and the ERB's policy allocation returned 1.52 percent below the median fund.

Mr. van Moorsel described how investment agencies might attempt to maximize investment returns through indexing or asset management. He noted that while investment gains through asset management are not usual with respect to assets such as equities and fixed income assets, high potential for such investment gains exists with respect to opportunistic credit and private equity asset classes. External manager fees, Mr. van Moorsel stated, are a cost of asset management. External fees could be reported on-budget or off-budget, dependent upon the asset class.

Committee members discussed with Mr. van Moorsel various issues, including:

- the reasons for the return-on-investment benchmarks adopted by the investment agencies and the previous need to make those benchmarks more attainable;
- the status of the investment funds' post-recession recovery;
- a recent external, comparative study of the rates of return of various pension funds throughout the country;
- the reasons for cash balance requirements for investment agencies, such as the ERB, including liquidity for payroll purposes;
- how the rate-of-return benchmarks help shape the agencies' investment policies and the agencies' distributions to beneficiaries;
- the necessity for distribution of information regarding the manner in which money flows to and from the state's investment funds;
- a comparison of asset management fees among the state's three investment agencies; and
- the rates of return for individual investment asset classes.

PERA Recent Investment Performance and Strategy to Meet Long-Term Earnings Benchmark; On-Budget and Off-Budget Asset Management Fees

Joelle Mevi, chief investment officer, PERA, provided the committee with an overview of the PERA's investment strategy and the management fees paid to investment managers. Ms. Mevi began her presentation with a comparison, since inception and over the last 15 years, of the actual rate of return earned by the PERA fund to the PERA board's established target rate of return and its long-term benchmark. Ms. Mevi indicated that, overall, the performance of the fund has been exceeding its targets and benchmarks. She stated that the PERA fund has grown from \$11.7 billion on June 30, 2012 to \$13.268 billion on May 31, 2013.

Ms. Mevi attributed the fund's overall performance to the PERA's investment strategy, focused on asset allocation and investment in equities. She indicated that over the last fiscal

year, the PERA's equity allocation has increased due to the strength in the global equity markets. She also attributed the fund's performance to the value added by investment managers.

Ms. Mevi indicated that the PERA board has recently adopted a re-balancing policy that sets ranges for its asset allocation target percentages. For example, the target for international equity has been reduced from 27 percent to 20 percent while increasing the target for real assets. She also commented on the PERA's cash balances, indicating that the PERA keeps a one percent cash balance in order to meet liquidity demands, including payroll. She estimated that the cash balances range from \$85 million to \$100 million.

Next, Ms. Mevi focused her discussion on the PERA's policy on management fees. She emphasized that the PERA's investment policy broadly focuses on administering the investments of the PERA at a reasonable cost while avoiding diminishing quality. Using preliminary figures for June 13, Ms. Mevi estimated that the PERA paid approximately \$64.7 million in asset manager fees. About \$22.7 million were paid with respect to management of traditional assets, such as stocks and bonds. Those fees are budgeted by the Department of Finance and Administration. In addition, about \$28.6 million in management fees were paid with respect to investments in hedge funds, and \$13.3 million were paid with respect to investments in private assets. Overall, management fees constituted approximately one-half percent of the total fund market value.

Committee members discussed with Ms. Mevi several issues, including:

- the reasons for the reduction of the PERA's target rate of return from eight percent to 7.75 percent, including improved attainability;
- comparison of the PERA's management fees to those of the ERB and SIC;
- the amount of cash balances kept by the PERA to meet liquidity needs, such as refund payment;
- the methods by which management fees are paid by and reported to the PERA;
- the manner in which the value added by external managers is distinguished from market performance, including the use of consultants to make such distinctions;
- a recommendation to compare the performance of the PERA's external managers relative to other external managers;
- the amount of discretion provided to the PERA's external managers within the guidelines set by the PERA board;
- the necessity for implementation of "stop-loss" strategies and the PERA's inquiry of potential asset managers about such strategies;

- reasons that some benchmarks for asset managers are not adjusted, such as negotiated contracts; and
- the minimum and maximum fees that can be earned by the PERA's external investment managers.

ERB Recent Investment Performance and Strategy to Meet Long-Term Earnings Benchmark; On-Budget and Off-Budget Asset Management Fees

Bob Jacksha, chief investment officer, ERB, provided the committee with an overview of the ERB's investment performance, strategy and the management fees paid to investment managers. Mr. Jacksha highlighted that, on March 31, the Educational Retirement Fund balance reached an all-time high of \$10.2 billion. Investment earnings for the 12 months ended March 31 exceeded \$950 million, a return of more than 10 percent. Portfolio returns equaled or exceeded actuarial targets in most measured periods, and actual returns exceeded the policy index in all measured periods. Mr. Jacksha noted that the comparison of the Educational Retirement Fund's actual earnings to the policy index reflects the value added by the ERB's investment managers.

Mr. Jacksha indicated that the fund continued to enjoy positive investment performance in April and May. On May 31, fund assets approximated \$10.3 billion. While returns for June are expected to reflect about a two percent reduction, the final determination of fund assets for the end of the fiscal year will likely still exceed \$10 billion.

The ERB's investment strategy, according to Mr. Jacksha, is motivated by the necessity to meet its basic pension equilibrium formula. The formula requires that contributions to the Educational Retirement Fund from employees and employers, plus investment returns, equal benefits paid and the fund's expenses. In the ERB's case, it has determined that to satisfy the formula, investment returns must equal at least 7.75 percent.

A second goal implicit in the ERB's investment strategy is to reduce return volatility through diversification. Mr. Jacksha stated that the ERB uses asset allocation to accomplish diversification. He said that asset allocation is the primary determinant of the ERB's investment returns.

Components of the ERB's investment strategy include determinations of the possible returns relative to market indices (alpha) and managerial skill (beta), and whether to use active or passive asset management for the various asset classes. The ERB must also determine whether to use external or internal managers.

Mr. Jacksha provided an analysis of various asset classes, their expected rates of return and their expected volatility. He indicated that as part of its investment strategy, the ERB determines how the individual asset classes move relative to other asset classes in a given economic or market cycle. Assets for which returns move in opposite directions generate a

portfolio with less risk. Mr. Jacksha explained that the ERB compiles a matrix of the forecasted asset class correlations. The matrix is used to generate an optimal asset allocation. The ERB's actual asset allocation as of March 31, 2012 is expected to generate a return of 8.2 percent over the next 30 years.

Mr. Jacksha discussed the management fees paid by the ERB. The ERB looks to the two sources of return for a portfolio, beta and alpha. He explained that higher management fees are characteristic of markets with a higher alpha, derived from manager skill. In markets with little to no alpha, the ERB seeks to minimize managerial fees. For instance, in large cap U.S. equity markets, international developed equity markets and core fixed income markets, market fees are relatively low because those markets are characterized by low alpha potential. On the other hand, in opportunistic credit and private markets, characterized by high alpha potential, managerial fees are high. Mr. Jacksha described, in detail, the process by which managerial fees are paid with respect to various markets, including the profit-sharing component of fees paid with respect to private markets. In fiscal year 2012, the ERB paid approximately \$78.7 million in total investment management and consulting fees, including both off-budget and on-budget expenses. Total on-budget expenses approximated \$14 million, while off-budget expenses approximated \$64.7 million.

Mr. Jacksha summarized the ERB's goals when it invests in various asset classes. With respect to private equity, he explained that the ERB aims to achieve a long-term net return in excess of public equities, with the secondary goal of gaining some portfolio diversification benefits. With respect to opportunistic credit assets, including high-yield bonds and foreign bonds among other assets, the ERB seeks additional portfolio diversification, while generating attractive returns that will lag public equities during bull markets. For global tactical asset allocation assets, the ERB seeks additional portfolio diversification and reasonably attractive net returns over time.

Mr. Jacksha provided a listing of the performance of its investments in various asset categories. In the context of a discussion of the benefit of the ERB's use of external managers, Mr. Jacksha opined that it is reasonable to conclude that the ERB reached more mature funds and outperformed the public markets. Finally, Mr. Jacksha highlighted that all of the ERB's alternative assets are reported net of fees and that all of the fees charged by the ERB's traditional managers are reported gross of fees.

Committee members discussed with Mr. Jacksha the following issues, including:

- the manner in which performance fees for investment managers are set;
- the relative aggressiveness of the various individual asset classes;
- the possible necessity for a "stop-loss" strategy for the ERB;
- the effects of time and performance on management fees; and

- the circumstances under which investment management contracts may be terminated and the effect upon the investment manager to continue to get paid pursuant to applicable profit-sharing provisions in the contracts.

PERA Board Travel, PERA Overview and Status of the Legislative Retirement Plans

Wayne Propst, executive director, PERA, provided the committee with information regarding the PERA board members' expenditures for travel. He noted that at the end of fiscal year 2013, the PERA will revert 14 percent of its appropriation allocated to board travel and training. Mr. Propst indicated that such travel and training expenditures are necessary because board members are statutorily required to complete eight hours of training per year. He stated that some of the most informative training sessions occur in other states and require travel.

Ultimately, Mr. Propst indicated that the PERA board members are cognizant of the need to be prudent in expending trust fund money for travel. He further stated that the PERA board is not unique in its participation in "due diligence" site visits and that such visits have been identified as comporting with best practices. Mr. Propst indicated that such travel constitutes a minimal expenditure relative to the PERA trust fund balance.

Patricia French, chair, PERA board, discussed the necessity for board travel. She emphasized that travel for due diligence trips and training is necessary for board members to meet their fiduciary responsibilities to the PERA beneficiaries. The committee members discussed with Mr. Propst and Ms. French the goal of balancing prudent spending with the necessity for adequate training, acknowledging the magnitude of the pension funds that the board members oversee.

Mr. Propst next highlighted a number of statistics pertaining to the Legislative Retirement Fund. He noted that its "funded ratio" is 92 percent, with 101 total active members and 163 retirees. He also stated that the average age at retirement is 65.8 years.

Mr. Propst explained that a cost-of-living adjustment (COLA) will apply to legislative retirement plan members as a result of this year's passage of Senate Bill 27. The bill reduces the compounding COLA from three to two percent, with no change in eligibility for employers who retire at age 65 years or older due to disability. The period for COLA eligibility is also extended to seven years from two calendar years, with a graduated eligibility period for active members retiring between July 1, 2014 and July 1, 2016.

Mr. Propst discussed in detail the manner in which annual pension benefits are calculated. Under plan 2, the annual pension benefit for retirees is calculated by multiplying 11 percent of the per diem rate in effect on the first day of the calendar year the member retires by 60 and the applicable service credit. He stated that the Legislative Retirement Fund was created in the State Treasury to finance the benefits under state legislator plan 2. The state contributes an amount necessary to finance the benefits provided under plan 2 on an actuarial reserve basis.

Finally, Mr. Propst described the funding mechanism for the Legislative Retirement Fund. He explained that the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act requires withholding on: (1) all payments of oil and gas proceeds derived from wells located in New Mexico, except for payments to individual residents of New Mexico or tax-exempt entities; and (2) distributions to nonresident owners of profits not subject to oil and gas proceeds withholding provisions from pass-through entities that do business in New Mexico. From the withheld amounts paid to the Taxation and Revenue Department, it makes an automatic monthly distribution of \$200,000 to the fund.

Committee members subsequently discussed issues pertaining to the provision of pensions to legislators who retire at a young age.

SIC Recent Investment Performance and Strategy to Meet Long-Term Earnings Benchmark; On-Budget and Off-Budget Asset Management Fees, Including Alternative Asset Fees

Steven Moise, state investment officer, SIC, and Vince Smith, deputy state investment officer, SIC, provided the committee with an overview of the SIC's investment performance and strategy and the management fees paid to investment managers.

Mr. Moise indicated that, according to preliminary June 30 data, the SIC manages \$17.013 billion in assets, including, among other funds, the Land Grant Permanent Funds (LGPF) and the Severance Tax Permanent Fund (STPF). The estimated value of the LGPF is \$12.024 billion, while the estimated value of the STPF is \$4.124 billion. Mr. Moise noted that the value of the STPF has dropped by approximately \$600 million from its highest value in 2007. He highlighted that transfers from the Severance Tax Bonding Fund to the STPF dropped significantly, to \$85.00, in the 2013 calendar year. Mr. Moise suggested that sources for contributions to the STPF should be explored.

Mr. Smith discussed the SIC's long-term return targets and its investment strategy. He noted that asset allocation is a key component of the SIC's investment strategy. In 2011, the SIC conducted an asset allocation study with assistance from advisors. As a result of its review of its portfolio target and risk level, the SIC ultimately determined that its return-on-investment target of 8.5 percent should be reduced to 7.5 percent.

In keeping with its goal to reduce risk and volatility, the SIC has focused its strategy on shifting focus away from public equity risk and diversifying its investments. In particular, Mr. Smith indicated that the SIC is concerned with increasing exposure to income-producing investments that protect purchasing power and increasing investments that perform favorably when interest rates rise. Such investments could include floating rate debt, timber and energy. Mr. Smith mentioned that in an economic climate characterized by rising interest rates and slowed gross domestic product growth, real assets tend to perform more favorably relative to other asset classes. Mr. Smith also provided the SIC with a detailed graph pertaining to the SIC's asset allocation history and a table summarizing the results of its asset allocation study.

Mr. Smith next spoke about the impact of its asset allocation study on the investment management fees it pays. He stated that investment strategy determines the fee structure for SIC. He noted that some asset classes are better aligned with passive management, while other asset classes perform more favorably with active managers. Keeping this in mind, Mr. Smith stated that the SIC will consider the best-in-class managers charging a market rate and will negotiate fees. Economies of scale with respect to larger funds are also considered. However, Mr. Smith noted that management fees are not viewed by the SIC as merely an expense that should be minimized. The SIC ultimately attempts to pay fees that will attract quality managers who will yield the best returns for the state.

Mr. Smith explained that with respect to investments in publicly traded stocks and bonds, management fees are generally based on total assets. Those fees are paid through the budget process. With respect to alternative investments, Mr. Smith said that management fees are typically "embedded" with the managed assets. The management fees for alternative investments vary with the asset class. When discussing the various management fee structures, Mr. Smith noted that, in most cases, the return on investment resulting from the value added by managers exceeds the management fees paid by the SIC. Overall, the return on investment is expected to be about \$2.00 to \$3.00 for every additional \$1.00 paid in fees. Still, Mr. Smith added, the SIC always attempts to negotiate lower management fees.

Mr. Smith provided a general comparison of SIC management fees to the management fees paid by the state's other investing agencies. Mr. Smith said that, like the other agencies, the SIC pays management fees that are at or below the market rate. Mr. Moise added that it is often difficult to draw specific comparisons between the management fees paid by the different agencies within the state or among similar agencies nationwide because of the differences among the agencies' asset allocations.

Committee members discussed with Mr. Moise and Mr. Smith the following topics:

- the size of the funds managed by the SIC relative to those managed by similar agencies in other states;
- the manner in which management fees are budgeted;
- the impact of capital outlay needs on the STPF;
- the possibility of seeking sources of sustainable funding for the STPF, in addition to or in replacement of severance tax revenues; and
- the expectations for continued growth of the LGPF.

Adjourn

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

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

**August 9, 2013
Room 322, State Capitol
Santa Fe**

The third meeting of the Investments and Pensions Oversight Committee (IPOC) for the 2013 interim was called to order by Representative Jim R. Trujillo, chair, on Friday, August 9, 2013, at 9:15 a.m. in Room 322 of the State Capitol in Santa Fe.

Present

Rep. Jim R. Trujillo, Chair
Sen. Jacob R. Candelaria
Rep. Larry A. Larrañaga
Sen. Carroll H. Leavell
Sen. Bill B. O'Neill
Rep. Jane E. Powdrell-Culbert
Rep. William "Bill" R. Rehm
Sen. William P. Soules
Rep. Luciano "Lucky" Varela

Advisory Members

Rep. Donald E. Bratton
Rep. Miguel P. Garcia
Rep. Roberto "Bobby" J. Gonzales
Sen. Mary Kay Papen
Rep. Sheryl Williams Stapleton

Absent

Sen. George K. Munoz, Vice Chair
Sen. Sue Wilson Beffort
Sen. Steven P. Neville
Rep. Henry Kiki Saavedra

Sen. Carlos R. Cisneros
Rep. William "Bill" J. Gray
Sen. Stuart Ingle
Rep. Emily Kane
Sen. Timothy M. Keller
Rep. Tim D. Lewis
Rep. Patricia A. Lundstrom
Sen. William H. Payne
Sen. John C. Ryan
Sen. Michael S. Sanchez

Guest Legislator

Representative Dennis J. Roch

Staff

Claudia Armijo, Staff Attorney, Legislative Council Service (LCS)
Amy Chavez-Romero, Assistant Director for Drafting Services, LCS
Ric Gaudet, LCS
Pam Stokes, Staff Attorney, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Friday, August 9

Capital Outlay: Statewide and Local Overview

Sonya Snyder, senior fiscal analyst, Legislative Finance Committee (LFC), and Kathleen Dexter, researcher, LCS, reviewed for the committee the process for selecting and funding statewide and local capital outlay projects. Ms. Snyder reviewed the June 2013 LFC capital project quarterly update of current projects. Several projects were highlighted as being behind schedule. She also discussed recommended legislative guidelines for selecting local capital projects. Ms. Dexter described how capital outlay projects are funded, mostly through severance tax bonds and general obligation property tax bonds. She then presented a list of capital projects that were put on hold by the Office of the Governor because of audit issues.

Committee members discussed with Ms. Snyder and Ms. Dexter the issue of the governor's freeze of some capital projects because some governmental entities had audit problems. Points discussed included:

- whether the governor has the authority to withhold allotments for those projects;
- the need for strict accountability for all money that the state spends;
- the need for more auditors willing to perform audits for small governmental entities;
- the possibility for the Office of the State Auditor to hire temporary auditors to perform audits for small governmental entities; and
- what criteria were used to determine that a governmental entity is "at-risk".

The minutes from the July 10, 2013 meeting of the committee were approved, without changes.

State Investment Council (SIC) Investment Policies, Practices and Returns of Economically Targeted Investments (ETIs); Sun Mountain Capital Report on Private Equity Programs; Albuquerque Economic Development (AED) Report on "Closing Funds" as Economic Tools

Steven Moise, state investment officer, Vince Smith, deputy state investment officer, Sally Corning, partner, Sun Mountain Capital, and Gary Tonjes, president, AED, discussed economic development strategies of their respective institutions. Mr. Moise began by describing ETIs

managed by the SIC. The SIC is allowed to invest a portion of the Severance Tax Permanent Fund (STPF) in these investments, which are aimed both to generate revenue for the fund and to stimulate economic development in the state. However, the SIC currently only has nearly 10 percent of the fund, or \$370 million, invested in ETIs, due to the lack of market-rate returns available from such investments. The SIC is additionally required to invest one percent of the STPF in the Small Business Investment Corporation (SBIC), and it currently has \$47 million invested in that program.

Private equity investments performed poorly in the decade from 1993 to 2003, losing 18 percent of the investment value. However, many of those investments are still active and should pay off when a company is sold or listed on a stock exchange. Since 2004, when the SIC modified its investment strategy, investment returns have increased slightly. The SIC offers loans for New Mexico film productions, but now it only offers loans at a market rate. The former practice of offering zero-interest loans and receiving a share of profits has been discontinued. Although the loan program theoretically helped create film industry jobs in the state, those investments performed considerably below the level of that money had it been invested in U.S. government treasury notes.

The SIC supports ETIs but is now focused on those investments that can bring market-rate returns. It expects to invest about \$40 million annually in those companies that have a realistic expectation of bringing a good return to the STPF.

Ms. Corning discussed the private equity investment program that Sun Mountain Capital manages for the SIC. Over \$350 million has been committed to 28 different venture capital funds that support New Mexico-based companies. These funds have invested more than \$2 billion in 62 New Mexico companies since 1993. The program's financial performance has improved steadily since 2004, and it is currently in line with national venture capital benchmarks. Sun Mountain Capital reviews potential venture capital funds for investment, with about 30 funds being evaluated for every one fund selected. During the economic downturn beginning in 2008, no new money was invested in venture capital funds because the loss in value of the STPF put the existing investments very close to the statutory cap on ETIs invested in the STPF. However, during that time, Sun Mountain Capital continued investing its other money in New Mexico companies. The economic impact of these investments in the state was significant, with nearly \$200 million in additional payroll and purchases and the creation of 1,300 new high-salary jobs.

Mr. Tonjes then discussed with the committee deal-closing funds and how they are used to attract economic development. Deal-closing funds are set aside by nearly 40 states to help provide competitive incentives to attract new or expanding businesses to the state. They are usually used for infrastructure investments and are often used in combination with other economic incentives. Several states, including Texas, California and Florida, have sizable funds between \$100 million and \$250 million, but New Mexico only appropriated \$3 million toward these kinds of incentives for the current fiscal year through the Local Economic Development

Act (LEDA). The LEDA allows local governments to offer infrastructure to companies seeking to locate in their communities. Mr. Tonjes also discussed how various states manage and protect investments made with companies, including post-performance awards and clawbacks for non-performing companies.

Committee members made several comments, including the following.

- New Mexico lacks sufficient incentive funding to close deals with relocating companies. Mr. Tonjes said that most of the \$3 million allocated for LEDA grants for the current fiscal year has been dedicated. The state needs to allocate between \$25 million and \$30 million to be competitive with other states.

- Hewlett-Packard, which received millions of dollars in incentives, does not even have 100 employees in Rio Rancho anymore. Clawbacks need to become part of any incentive agreement.

- The regulatory climate in the state does not lend itself to companies expanding their operations. For example, it took several years for Intel to secure an air quality permit from the Department of Environment.

- Providing more cash incentives for companies to locate in the state may mean that New Mexico and other states are engaged in a "race to the bottom" in which a company plays one area against another to secure the best deal possible.

- Clawback provisions need to ensure that a company may not declare bankruptcy to avoid paying the state back if it fails to perform as promised.

SBIC Programs Update

Russ Cummins, executive director and investment adviser, and Joseph Badal, president and chair, SBIC, presented an update on the economic development programs operated by the SBIC. The SBIC was formed in 2001 by statute, with the purpose of creating new job opportunities statewide by making investments with development partners to help fund small businesses. The SBIC program is funded by a one percent allocation of the STPF. The program has lost money since 2007, mainly from losses in the equity program and from management fees. The SBIC has subsequently changed its policy from investing in equity to a lending program, which is performing better. The SBIC implements the lending program through three community development partners, and it has begun the process of negotiating agreements with them to shelter the SBIC from any loan losses. More than \$40 million in loans have been made since the program's inception, supporting or creating 6,700 New Mexico jobs.

Benefits of the lending program include: smaller transactions benefit more businesses; the lending program fills a funding gap, since banks tend to have a more conservative lending

approach; no management fees or dilution of the investment; and funds tend to be dispersed statewide, rather than concentrated in Albuquerque.

Educational Retirement Board (ERB) Update on Meetings with Stakeholders and Possible Changes to the Pension Plan; Update on Pending Litigation

Jan Goodwin, executive director, ERB, and Chris Schatzman, general counsel, ERB, gave updates to the committee about recent activities at the ERB and pending litigation. Ms. Goodwin discussed possible changes to pension plans to further enhance the actuarial soundness of the Educational Retirement Fund (ERF). These changes are being discussed with ERB stakeholder groups over the summer and include:

- elimination or changing of the return-to-work (RTW) provisions, including requiring certain part-time RTW employees to contribute to the ERF;
- strengthening anti-spiking laws to ensure that the ERF is not negatively impacted by employees who receive a large pay increase and subsequently retire;
- changing the pension calculation for employees who currently are able to work part-time most of their career and then work full-time the last five years in order to receive a full pension;
- implementing a "Rule of 80" reduction factor for certain younger employees who qualify under that rule; and
- changing the service credit multiplier for new members.

Committee members made many comments and posed questions for Ms. Goodwin, including the following.

- Setting strict anti-spiking provisions will hurt teachers who become school principals toward the end of their careers.
- Why does a person who has contributed to the educational retirement system, retires and subsequently becomes an employee again need to make contributions to the ERF, even though that person will see no future benefit from those contributions?
- Salary spiking has never been an issue in the educational retirement system, so there is no need to make any changes to current law.
- Is there evidence to suggest that eliminating the RTW exception for part-time employees earning less than \$15,000 annually will have a positive actuarial effect on the ERF? Ms. Goodwin said that the actuarial analyses will be completed soon.
- The ERB needs to better include all stakeholder groups in pension change discussions.

- When the legislature enacted a "Rule of 80" provision, it did not have correct actuarial figures. The result was that the legislation hurt the solvency of the ERF, rather than helping it. Ms. Goodwin said that the ERB mistakenly used pension reduction factors that had been in place for many years, but those reduction factors were also not accurate.

Mr. Schatzman briefly discussed the status of pending litigation in which the ERB is involved. The newest case involves a challenge by some ERB members claiming that recent legislation making changes to current retirees' cost-of-living adjustment is unconstitutional. Arguments in the case are scheduled in September. Other pending cases include whether the 2009 contribution shift that employees were burdened with paying constituted a "taking"; and several related cases involving alleged investment fraud and kickbacks by former executives of the SIC and ERB.

New Mexico Retiree Health Care Authority (RHCA) — Post-Annual Board Meeting Update and Possible Statutory Changes

Mark Tyndall, executive director, RHCA, discussed with the committee recent activities of the RHCA and possible statutory changes to increase the soundness of the Retiree Health Care Fund (RHCF). At the annual RHCA board meeting, the board increased premiums for pre-Medicare retirees by eight percent; increased premiums for the Medicare supplement program by six percent; and reduced the subsidy currently given for retirees with multiple dependent children. The board also confirmed its intent to not have any health plans that will be subject to extra federal taxation for generous health plans, beginning in 2018. The impact of these board decisions reduced the unfunded liability of the RHCF by \$200 million.

The RHCA has a five-year strategic plan to increase the solvency of the RHCF through 2043. That plan includes phasing out family coverage subsidies for retirees; increasing cost-sharing on prescription coverage; increasing cost-sharing of pre-Medicare plans; and increasing the employer and employee contribution levels. The increase in contribution levels is the only step in the plan that requires legislative action. The RHCA is recommending that employees gradually pay an additional .75 percent of their salary into the RHCF and that employers gradually pay an additional 1.5 percent.

Questions and comments from committee members included the following.

- What will be the impact on the solvency of the RHCF if the number of public employees does not increase? Mr. Tyndall said that built into the solvency assumptions is an annual payroll growth of four percent. Every .25 percent of payroll less than that amount means one year less of RHCF solvency.

- What will be the impact on dependent children whose health care subsidies are eliminated? Mr. Tyndall said that RHCA rates for dependent children were only slightly lower than those found in the commercial market. He estimated that 500 retirees were impacted with the recent change in subsidy.

- The solvency of the RHCF is much lower than other retirement funds. Mr. Tyndall said that in New Mexico, retiree health care is not a property right, which is true of the pension plans. Some states do not have any retiree health care fund at all and just budget those expenses yearly.

- Favoring generic prescription drugs over branded drugs will have the long-term effect of discouraging drug company research into new drugs.

Judicial Retirement Act and Magistrate Retirement Act Potential Plan Solvency Changes; Report on Stakeholders' Input

Arthur W. Pepin, director, Administrative Office of the Courts (AOC), Oscar Arevalo, chief financial officer, AOC, and Wayne Propst, executive director, Public Employees Retirement Association, presented a recommendation to restructure judicial and magistrate retirement pension plans. The AOC will present two bills in the 2014 legislative session for consideration to reform judicial retirement plans. The bills will be similar to legislation the governor vetoed in 2013, with some important differences. First, the proposal to swap partial funding of the plans from the current use of court docket fees to annual general fund revenues will be removed, since that was a concern of the Office of the Governor. Second, in order to ensure the solvency of the Magistrate Retirement Fund, a one-time \$5 million appropriation would be made to that fund. Third, the state would pay the judges' and magistrates' share of salary to the pension funds for those not participating in the plans. Finally, both plans would modify the survivor beneficiary provisions to provide an actuarially sound payout over the lifetime of the survivor.

Questions and comments from committee members included the following.

- It is a strange practice to use docket fees to fund judicial retirement plans.
- Why are there separate plans for magistrates and judges? Mr. Pepin said that judges are not allowed to serve until they are 35 years old. Consequently, they need to contribute more because of their shorter time in office before retirement. Magistrates, on the other hand, are elected every four years, and there is no age restriction for their service.
- There should not be any retirement plans for elected officials, including legislators, judges or magistrates. Mr. Pepin said that the legislature could abolish retirement plans for new judges, but that would do nothing to alleviate the existing \$100 million shortfall for current judicial retirement plans. He said that a retirement benefit is an important aspect of a person wanting to become a judge or magistrate.

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

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

September 9, 2013
Room 322, State Capitol
Santa Fe

The fourth meeting of the Investments and Pensions Oversight Committee (IPOC) for the 2013 interim was called to order by Representative Jim R. Trujillo, chair, on Monday, September 9, 2013, at 9:15 a.m. in Room 322 of the State Capitol in Santa Fe.

Present

Rep. Jim R. Trujillo, Chair
Sen. George K. Munoz, Vice Chair
Sen. Jacob. R. Candelaria
Sen. Carroll H. Leavell
Sen. Steven P. Neville
Sen. Bill B. O'Neill
Rep. Jane E. Powdrell-Culbert
Rep. William "Bill" R. Rehm
Rep. Luciano "Lucky" Varela

Advisory Members

Sen. Carlos R. Cisneros
Rep. Miguel P. Garcia
Rep. Roberto "Bobby" J. Gonzales
Rep. Sheryl Williams Stapleton

Absent

Sen. Sue Wilson Beffort
Rep. Larry A. Larrañaga
Rep. Henry Kiki Saavedra
Sen. William P. Soules

Rep. Donald E. Bratton
Rep. William "Bill" J. Gray
Sen. Stuart Ingle
Rep. Emily Kane
Sen. Timothy M. Keller
Rep. Tim D. Lewis
Rep. Patricia A. Lundstrom
Sen. Mary Kay Papen
Sen. William H. Payne
Sen. John C. Ryan
Sen. Michael S. Sanchez

Guest Legislator

Rep. Alonzo Baldonado

Staff

Claudia Armijo, Staff Attorney, Legislative Council Service (LCS)
Amy Chavez-Romero, Assistant Director for Drafting Services, LCS
Ric Gaudet, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Monday, September 9**Education Trust Board (ETB); New Mexico College Savings Plans Overview**

Dr. José Z. Garcia, secretary of higher education and chair, ETB; Jeremy Thiessen, investment consultant, Pension Consulting Alliance (PCA); Joseph Goldberg, attorney, Friedman Boyd Hollander Goldberg Urias & Ward; and Kevin Deiters, executive director, ETB, gave an overview of the ETB's programs and an update on the performance of the state's college savings plan funds. The ETB is the governing body for New Mexico's "529" college savings plans. It is entirely funded from fees and dividend revenues from the funds it administers. The ETB has two 529 plans it offers for sale: the Education Plan (EP), directly sold by the ETB, and the Scholar's Edge (SE), sold by the investment firm Oppenheimer Funds. The SE has more than 140,000 accounts in the state totaling \$1.7 billion, while the EP has 21,000 accounts valued at \$400 million. Both plans offer age-based and static portfolio investment strategies, and the SE allows investors to custom design their own investment strategies.

The ETB took several steps during the previous fiscal year to improve investment performance, including adopting a revised investment policy and monitoring guidelines, performing a comprehensive review of its portfolios, making changes to its investments to reduce the risk of lower yields due to higher interest rates and reducing fund manager risks. The ETB provides \$500,000 per year in scholarships for first-time freshmen students who have graduated from a New Mexico high school with a minimum 3.25 grade point average and who demonstrate financial need.

Mr. Thiessen described the services provided to the ETB by PCA since 2011. PCA monitors and reports to the ETB on performance of both 529 plans and provides monthly and quarterly recommendations. The reports include ranked performance against other states' plans for multiple age groups. In the past year, New Mexico's portfolios have performed better than most other states, and the EP has performed slightly better than the SE plan. PCA has worked closely with the ETB and Oppenheimer Funds to monitor additional risks to the portfolios, including the very high risk of increased U.S. Treasury bond rates, which will have a negative impact on the fixed-income portfolio.

Committee members discussed with the panel many issues, including the following.

- What are the strategies that PCA and the ETB are pursuing to offset treasury bond rate increases? PCA recommends investing more in international bond funds, which will yield better than domestic bonds if interest rates rise in the U.S. When a student is in the last few years before entering college, most of that student's 529 plan is shifted to fixed-income investments to reduce risk of capital losses. However, at current interest rates, any increase in those treasury bond rates could mean capital losses for those plans.
- The ETB should consider investing the Lottery Tuition Fund in students' 529 plans three to five years before they enter college and require investment in a 529 plan in order to receive a lottery tuition scholarship.
- The ETB needs to recruit more people to invest in 529 plans. Mr. Deiters agreed but said that one reason people do not invest is that they believe the lottery tuition scholarships will pay for all college expenses. In fact, students in New Mexico borrowed \$6.20 for every dollar they received in lottery tuition scholarships. The Lottery Tuition Fund is expected to incur a shortfall in a few years, which will require reduced scholarship amounts for all students.
- There is much confusion among the general public about New Mexico's college savings plans. Many residents believe that they will be forced to send their children to a New Mexico college if they invest in a New Mexico college savings plan.
- ETB staff was asked to provide disclosure information about the state's 529 plans to the committee.

Minutes

The minutes from the August 9, 2013 meeting of the IPOC were approved without changes.

Volunteer Firefighters' Retirement Plan: Eligibility, Plan Funding Sources and Solvency

Vernon Muller, deputy state fire marshal, and Wayne Propst, executive director, Public Employees Retirement Association (PERA), gave an update to the committee on recent changes to, and the current status of, the volunteer firefighters' retirement plan. The volunteer firefighters' retirement plan is in good shape with a funded ratio of 167%. There are slightly more than 5,000 active members and 633 retirees receiving a modest pension. The pension plan is funded by an annual distribution of \$750,000 from the Fire Protection Fund. Active volunteer firefighters are eligible for a \$125 or \$250 monthly pension after serving 10 or 25 years and upon reaching age 55.

In 2009, the legislature made changes to service credit and reporting requirements to enhance the plan as a recruitment tool for potential volunteer firefighters. A volunteer firefighter's attendance requirements at department activities was reduced from 75% to 50%. In addition, years of service credit earned but not reported were allowed to be reported after the fact,

and the documentation required to verify service credit was simplified. Since that legislation was enacted, many eligible firefighters have been given proper service credit, and ineligible firefighters were dropped from the potential pool of retirees. This has allowed for a better actuarial valuation of the fund. New legislation to limit the time frame to report previous service credit might be introduced in the coming legislative session to get a final understanding of who is eligible for a pension.

Committee members discussed with the panel some issues, including the following.

- Volunteer firefighters who subsequently become paid firefighters are unable to transfer any service credit toward their new plan.
- Fire departments are created by local governments, and the majority of them are staffed with volunteers. Some departments also have a few paid staff.
- Some regions with many calls per month make it difficult for volunteers to meet the 50% threshold to receive service credit. Mr. Muller said that fire chiefs are allowed to use some discretion in certifying eligibility for service credit.
- Fire departments need to do a better job of recruiting women to serve as firefighters.

Panel Discussion on New Governmental Accounting Standards Board (GASB) Rules Regarding the Reporting of Unfunded Public Pension Liabilities and New Auditing Requirements

State Treasurer James B. Lewis; Jeff Bridgens, CPA, Moss-Adams LLP; David Buchholz, bond disclosure counsel, State Board of Finance; and John Garrett, actuary, PERA, gave presentations on the new GASB Statement No. 68, "Accounting and Financial Reporting for Pensions", which is scheduled to take effect for fiscal years beginning after June 15, 2014. The panel discussion was moderated by State Treasurer Lewis and began with a detailed explanation by Mr. Bridgens of the new rule. Fundamentally, the new accounting standard requires governmental employers to report full pension liabilities as part of their financial statements, rather than just reporting those liabilities as informational items. This rule change has the possibility of significantly affecting the bottom lines of some governmental entities. The rule also changes the method of accounting for those pension plans, which might have the effect of increasing the calculated liability of some pension plans. However, the rule is not intended to be used for funding purposes, but only to better report long-term liabilities from an accounting point of view.

Pension liability is to be determined by calculating the net pension liability (NPL) of a plan, which consists of the total pension liability (TPL), less the plan's fiduciary net position. A plan's TPL is defined as the actuarial present value of projected benefit payments attributed to past periods. The biggest change to the methods of calculating TPL is the requirement to use a "blended" discount rate, consisting of the standard long-term expected rate of return for the fund

and a top-rated municipal bond rate. This blended discount rate could have the effect of lowering the discount rate used to calculate TPL, which would mean that a pension plan's funded ratio would decrease.

Mr. Buchholz explained that the new rule has the possibility of affecting the rate received by the State Board of Finance when selling general obligation bonds or severance tax bonds (STBs) because bond disclosure statements include calculated pension liabilities. Increased pension liabilities could mean that the state must pay a higher interest rate when it sells bonds, even though those bond sales have very little to do with the state's pension liabilities.

Mr. Garrett summarized some of the impacts the new rule will have on governments, including the separation of accounting and funding of pension plans; moving NPL to the balance sheet of governmental employers; and the reporting of annual pension expense or even the absurdity of pension income with no direct relationship to the actuarially determined contributions made. He said that the GASB rule is intended solely for the purpose of financial reporting; ratings agencies measurements are solely for the purpose of assessing credit ratings; and neither of those measurements should be confused with the actual actuarial condition of a pension.

Committee members discussed with the panel many issues, including the following.

- How do ratings agencies interact with the new GASB rule? Mr. Buchholz said that ratings agencies assess the likelihood of repayment of bonds. In theory, STBs should only be rated on their repayment source: severance taxes. In reality, agencies look at the general credit of the state, including its budget process, reserves, expenditures for the future and pension liabilities. The most important thing for the state to do is to ensure the actual solvency of its pension funds and then worry about how to report its financial statements.
- The Department of Finance and Administration is unable to keep track of how much cash flow it has at any given time. The only reliable source of information is coming from the Office of the State Treasurer.
- Every county, municipality and local government will need to comply with the new GASB rule. The PERA and Educational Retirement Board will need to provide much information to local governments to ensure that they can comply with the reporting requirements. Mr. Propst said that the PERA will do as much as possible to provide information needed by governmental entities to comply with the reporting requirements.
- The Moody's rating agency recently downgraded the City of Santa Fe's bond rating based on faulty and incomplete information. In addition, Moody's discount rate measurement of five percent is absurd, according to a national bond association.

There being no further business, the committee adjourned at 3:40 p.m.

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

October 16, 2013
Room 307, State Capitol
Santa Fe

The fifth meeting of the Investments and Pensions Oversight Committee (IPOC) for the 2013 interim was called to order by Representative Jim R. Trujillo, chair, on Wednesday, October 16, 2013, at 9:22 a.m. in Room 322 of the State Capitol in Santa Fe.

Present

Rep. Jim R. Trujillo, Chair
Sen. George K. Munoz, Vice Chair
Sen. Sue Wilson Beffort
Sen. Jacob. R. Candelaria
Sen. Steven P. Neville
Sen. Bill B. O'Neill
Rep. Jane E. Powdrell-Culbert
Rep. William "Bill" R. Rehm
Rep. Luciano "Lucky" Varela

Advisory Members

Rep. Donald E. Bratton
Rep. Miguel P. Garcia
Rep. Roberto "Bobby" J. Gonzales
Rep. Emily Kane

Absent

Rep. Larry A. Larrañaga
Sen. Carroll H. Leavell
Rep. Henry Kiki Saavedra
Sen. William P. Soules

Sen. Carlos R. Cisneros
Rep. William "Bill" J. Gray
Sen. Stuart Ingle
Sen. Timothy M. Keller
Rep. Tim D. Lewis
Rep. Patricia A. Lundstrom
Sen. Mary Kay Papen
Sen. William H. Payne
Sen. John C. Ryan
Sen. Michael S. Sanchez
Rep. Sheryl Williams Stapleton

Guest Legislator

Rep. Alonzo Baldonado

Staff

Claudia Armijo, Staff Attorney, Legislative Council Service (LCS)
Amy Chavez-Romero, Assistant Director for Drafting Services, LCS
Pam Stokes, Staff Attorney, LCS
Ric Gaudet, Researcher, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Wednesday, October 16**Capital and Overview of Capital Outlay Requests to Date; Water and Other Local Project Issues**

Linda Kehoe, principal analyst, Legislative Finance Committee (LFC), and Ryan Gleason, tax policy and research director, Taxation and Revenue Department, discussed funding of capital projects. Ms. Kehoe began by reporting to the committee that senior severance tax bonding capacity is expected to decrease \$38 million in 2014, to \$186 million. General obligation bonding capacity, based on an assumed proposed flat mill levy in 2014, will be \$165 million. State agency requests for capital improvement projects have not been totaled by the Department of Finance and Administration yet, but Ms. Kehoe said that state agencies typically request between \$700 million and \$800 million. Local governments are expected to request at least \$1.2 billion to meet their top priorities for capital projects.

Many local projects continue to be thwarted by not having sufficient funding to complete a phase. Many projects are funded by the legislature with only 10 percent to 20 percent of their funding needs, and those projects tend to remain underfunded for years.

Mr. Gleason described the difficulties encountered by local governments trying to get funding for water and wastewater projects. There are many different entities and many different funding sources for these projects, each with different eligibility guidelines, funding cycles, loan and grant agreements, oversight and reporting requirements. Small entities must spend a large portion of their staff time devoted to getting funding for a project. There is a huge amount of federal funding each year for water and wastewater projects that reverts because of timing issues and the fact that federal requirements are more stringent than state funding requirements. Mr. Gleason suggested that there is plenty of funding for projects, but there is a systemic lack of coordination between funding entities to ensure that available money is spent and that projects are fully funded. He suggested a model of funding projects that prioritizes local financing first, followed by federal financing, then by state loans and last by state grants. Loans should be preferred over grants because they have a much lower overhead cost and tend to be repaid easily

by revenues generated from the water or wastewater project. Finally, he recommended that projects should be phased and funded in a way that each phase of a project is operational.

Questions and comments from committee members included the following.

- The LCS' capital outlay request form needs to include information about other secured funding sources so that legislators and staff can ascertain how much a project actually needs to be fully funded. Ms. Kehoe said that LFC and LCS staff are revising that form to require more specific information from local entities. She said that the LCS capital outlay database might also become publicly accessible.

- Local governments are in the habit of requesting funding for several projects each year, knowing that there is probably not even enough money available to fully fund one of those projects.

- Many local governments are not doing any local financing for projects, preferring to ask the legislature for funding.

- There is very little auditing of local government capital projects.

- Why does so much federal money revert instead of being allocated to New Mexico projects? Mr. Gleason said that the process of obtaining federal loans and grants is much more cumbersome than most state processes. Most entities request state funding first. Then, if that does not happen, they look to federal funding. However, usually by the time the legislative funding cycle is over, much of the federal money has already reverted, and the window for applying for funding is very narrow. Ms. Kehoe said that each funding source is very protective of its power, so there is not very much collaboration in funding projects. New Mexico is backwards compared to other states in how it funds capital projects.

- How can collaboration between funding entities be accomplished? Mr. Gleason said that until local governments are required to seek federal funding prior to state funding, much of that federal funding will revert. Another issue is that the Water Trust Board funding cycle, which requires legislative approval for each project, makes it difficult to collaborate with other funding entities on projects. There will need to be statutory changes in order to achieve the goal of funding collaboration.

- Capital projects should be required to undergo what is known as "value engineering" to ensure that costs for projects are legitimate.

- How can an entity determine if it has met its auditing requirements, according to the governor's recent executive order prohibiting expenditure of funds for capital projects if an entity is in violation of certain audit requirements? Mr. Gleason said that if an audit finding relates to an entity's ability to correctly spend money, a state agency is prohibited from releasing money to

that entity. The executive order has had the result of many local governments fixing their audit problems. However, Mr. Gleason acknowledged that many rural local governments are unable to hire an auditor because of auditors' unwillingness to travel to remote areas.

- How do other states handle federal funding for water and wastewater projects? Mr. Gleason said that in most states, federal funding for those projects is the only external funding source, so local governments have no choice but to comply with the burdensome application and reporting requirements.

Severance Tax Bonding (STB) Program

Stephanie Schardin Clarke, director, State Board of Finance (SBOF), gave the committee an overview and history of the STB program. Severance taxes have been imposed in the state since 1937 and provide a significant funding source for general government, trust funds and capital improvements. Since 1959, certain severance tax receipts have been used to back bonds issued for capital improvements. In 1973, the modern STB program was created, with the creation of the Severance Tax Permanent Fund (STPF) and the restriction of issuance of bonds to 50 percent of the prior year's deposits into the STPF.

In 1999, a new class of bonds from the Severance Tax Bonding Fund was created as a result of the *Zuni* lawsuit, which required the state to establish a uniform method of funding public school construction. An additional 45 percent of the prior year's deposits was set aside for that program, and the bonds issued have mostly been short-term supplemental bonds, also known as "sponge" bonds. More than \$2.4 billion in school construction bonds have been issued since 1999. That money would have otherwise been deposited into the STPF, which is mostly used as a long-term revenue stream for the general fund.

Any remaining money from the statutory set-asides for bonding is deposited into the STPF. Ms. Clarke explained the volatile nature of deposits into the STPF, which have ranged from nothing to \$160 million in the course of one fiscal year. Bonding capacity is determined by the prior fiscal year's revenue, and that revenue is determined by the often-volatile energy production sector. Large increases in severance taxes do not translate that same fiscal year into increased bonding capacity, but they are used to determine the following year's capacity. The excess cash in the bonding fund is then deposited into the STPF. In similar fashion, a boom year in energy followed by a steep decline the next year might mean that the bonding capacity is increased, but bonds can only be issued if enough cash is available in the bonding fund to cover the cost of the bonds. The bonds issued that year will generally expend all of the available cash in the bonding fund, which means that no money is deposited into the STPF.

Questions and comments from committee members included the following.

- Why did the SBOF issue long-term supplemental severance tax bonds for public school construction rather than sponge bonds? Ms. Clarke said that in 2010, the Public School Capital 5

Outlay Council requested more money than was available in cash from the bonding fund. The SBOF decided to issue long-term bonds that year to cover the shortfall.

SBOF staff was requested to provide the committee with information on the percentage of public and private land and the percentage of each sector that contributes oil and gas revenue to the state government. SBOF staff was also requested to provide revenue modeling of the STPF, looking at the long-term impact of changing the current 4.7 percent annual distribution from the STPF to 5.8 percent.

Presentations and Panel Discussion on Legislative Planning for New Governmental Accounting Standards Board (GASB) Reporting Requirements with a Focus on the Impact on Local Governments

The committee heard from a large panel of representatives from state, local and national organizations and governments on the impact on local governments of the new GASB accounting and reporting rules.

National Conference of State Legislatures (NCSL)

Jeff Hurley, NCSL, began the discussion by describing the pension funding recommended guidelines developed by the NCSL and several other national organizations. With the new GASB Statements 67 and 68, there are now three broad sets of calculations that state and local governments need to perform regarding pension liabilities: accounting, bonding and funding. The group decided that developing pension funding guidelines was important because the new GASB statements broke the link between accounting and funding standards. The pension funding guidelines include recommendations to have a funding policy that is based on an actuarially determined contribution; to build funding discipline into the policy to ensure that promised benefits can be paid; to maintain intergenerational equity; to make employer costs a consistent percentage of payroll; and to require clear reporting to show how and when pension plans will be fully funded.

RBC Capital Markets

Paul Cassidy, RBC Capital Markets, discussed Moody's Corporation's recent changes to how it rates local governments for creditworthiness. In anticipation of the new GASB rules requiring local governments to fully report pension liabilities on their financial statements, Moody's and other ratings agencies have begun adopting adjustments to their analysis of state and local government pension data. Moody's determined that pensions are a growing source of credit pressure, with the general increase in liabilities coupled with the stagnant growth of revenues. An increase in pension liability relative to revenue is a negative credit factor. However, pension liability is just one of many rating factors in the overall bond rating for a local government. Moody's made four significant changes to how it analyzes a government's pension liabilities: liabilities of cost-sharing plans are allocated to local governments based on their proportionate share of the total plan liability; the discount rate used to measure long-term liabilities is based on a high-grade corporate bond index; the valuation of assets uses the market

value instead of "smoothed" asset valuation; and the calculation uses a standardized amortization schedule.

Moody's recently requested more detailed information from its local and state government customers regarding pension liabilities. A few governments in New Mexico were faced with the possibility of a credit downgrading after that information was reported, which caused a fair amount of panic in those finance departments. Mr. Cassidy detailed the experience of Las Vegas, New Mexico, which accidentally reported both the employer and employee share of pension funding, resulting in a threatened credit downgrading because that city's liabilities appeared much higher than normal. The city's original rating was subsequently confirmed.

Santa Fe County

Katherine Miller, county manager, Santa Fe County, described the county's recent experience with another threatened Moody's credit rating downgrade. Santa Fe County has a relatively high cost for its pension plans, dating back to union agreements from many years ago to pick up much of the employee share of pension plans. The county also has several funding sources to pay for its pension liability, in addition to the county general fund. In April 2013, just before the county was to begin the issuance of general obligation bonds, Moody's threatened to downgrade Santa Fe County's rating because the company only looked at county general fund revenues to cover pension liabilities. When the error was pointed out to Moody's, the company still refused to restore the rating until a thorough analysis had been completed. Needing to issue the bonds quickly, Santa Fe County decided to get a bond rating from Standard & Poor's instead, which gave the county its highest bond rating ever of AA+.

City of Santa Fe

Marcos Tapia, finance director, City of Santa Fe, also witnessed a downgrading of the city's credit rating by Moody's in July 2013. Mr. Tapia said that the city has not used Moody's ratings to secure bond financing since 2008. Moody's did not contact anyone at the city for information regarding its pension liabilities or funding sources and apparently also neglected to look at other city funds used to pay pension liabilities.

City of Albuquerque

Lou Hoffman, finance director, City of Albuquerque, said that the increased burden of GASB Statements 67 and 68, coupled with the requirements of 66 other GASB rules, will mean that it will be difficult for Albuquerque to meet the December 1 deadline to submit its comprehensive annual financial report (CAFR). The Public Employees Retirement Association (PERA) will also need to provide timely pension liability information to its members. He suggested that the state change Rule 2.2.2.9 NMRA, requiring a December 1 CAFR, to January 1. In addition, he suggested that the legislature authorize investment of local government trust funds using the Prudent Man Rule, rather than the more restrictive provisions of Section 6-10-10 NMSA 1978.

State Treasurer

State Treasurer James Lewis reported to the committee that the National Association of State Treasurers asked Moody's to delay implementation of its pension liability calculation methodology until after implementation of GASB Statements 67 and 68. Moody's declined to delay its rule changes. Currently, each of the three main rating agencies has a different methodology to assess pension liabilities of state and local governments. He said that Moody's caused Santa Fe County financial damage by releasing its preliminary report recommending that the county's bond rating be downgraded. He also said that Moody's new methodology of requiring a much lower discount rate than has been used will mean that funded ratios of pension plans could be shown in significantly worse shape. For example, North Carolina has been using a discount rate of seven percent to measure its pension plans, which showed its plans to be 100 percent funded. Using Moody's new methodology shows the state pension plans being funded at 65 percent.

Educational Retirement Board (ERB)

Jan Goodwin, executive director, ERB, reported to the committee that the ERB is implementing the reporting requirements of GASB Statement 67 early. The ERB will calculate the June 2012 pension liability with the new methodology, then recalculate the June 2013 liability taking into account the legislative changes made to pension plans in 2013. This early implementation will give its employer members two years of advance notice of the new financial data.

PERA

Wayne Propst, executive director, PERA, said that the PERA will do everything possible to provide timely and accurate information to its employer members. The PERA had already made a presentation to the committee about implementation of the GASB rules at an earlier meeting.

New Mexico Association of Counties (NMAC)

Santiago Chavez, finance director, NMAC, said that his organization will work closely with the PERA to get actuarial statements to counties. He expressed concern that Moody's new methodology for calculating pension liabilities will show new, unexpected liabilities to local governments, which may hurt their credit ratings.

Questions and comments from committee members included the following.

- What methodology is Moody's using to come up with its new discount rate? Mr. Hurley said that the AA corporate bond rate, currently around 5.5 percent, will be used, rather than a commonly used discount rate of seven percent, or a rate that reflects investment practices of a given fund. In addition, amortization is not being considered, and the practice of "smoothing", used to minimize the impacts of year-to-year volatility in investments, is not being allowed. He said that Moody's will be comparing local governments across the country, so a big economic downturn should have minimal relative impacts on credit ratings.

- Some pension funds, especially those facing large unfunded liabilities, take bigger risks in investing their funds. Ms. Goodwin said that Moody's will use the same discount rate for every pension fund, regardless of how each fund is actually invested.

- Can Santa Fe County change the 75 percent "pick-up" pension payment for its employees? Mr. Propst said that the pick-up provisions are not required by statute; the board of county commissioners could change that provision, subject to a collective bargaining agreement.

- State and local governments will now need to report pension liabilities in three different ways. Mr. Hurley said that the most important pension liability number is the actuarially determined calculation of how to fund the pensions; reporting for bond ratings or to meet GASB requirements is much less important.

- What is the GASB? Why does it have so much power? State Treasurer Lewis said that the GASB, a private organization, is the counterpart to the Financial Accounting Standards Board, which sets accounting standards for the private sector. The GASB has power in part because the ratings agencies have indicated that if a governmental entity does not comply with GASB rules, the entity will not be rated for creditworthiness. That would be devastating to the ability of a government to issue bonds for basic operations. Mr. Cassidy said that the GASB wants to ensure that state pension liability is accurately reflected on local governments' CAFRs in proportion to their share of the liability. Mr. Tapia said that in order to maintain their licensure, accountants must comply with GASB rules.

- Will the new GASB rules require fully funded pension plans to change their policies? Ms. Goodwin said that funding pension plans should be based on actuarially sound studies of each plan. GASB rules will not affect those policy decisions. However, the changes that Moody's has made will often mean that bond ratings for many local governments will be downgraded.

- There may be some sort of collusion between the GASB and the ratings agencies.

Minutes

The minutes of the September 9, 2013 meeting of the committee were approved without changes.

Adjourn

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

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

**November 7, 2013
Room 322, State Capitol
Santa Fe**

The sixth meeting of the Investments and Pensions Oversight Committee (IPOC) for the 2013 interim was called to order by Representative Jim R. Trujillo, chair, on Thursday, November 7, 2013, at 9:18 a.m. in Room 322 of the State Capitol in Santa Fe.

Present

Rep. Jim R. Trujillo, Chair
Sen. Sue Wilson Beffort
Sen. Jacob R. Candelaria
Sen. Carroll H. Leavell
Sen. Steven P. Neville
Sen. Bill B. O'Neill
Rep. Jane E. Powdrell-Culbert
Rep. William "Bill" R. Rehm
Rep. Luciano "Lucky" Varela

Advisory Members

Rep. Donald E. Bratton
Sen. Carlos R. Cisneros
Rep. Miguel P. Garcia
Rep. Roberto "Bobby" J. Gonzales
Sen. Stuart Ingle
Sen. Timothy M. Keller
Sen. Mary Kay Papen

Staff

Claudia Armijo, Staff Attorney, Legislative Council Service (LCS)
Amy Chavez-Romero, Assistant Director for Drafting Services, LCS
Pam Stokes, Staff Attorney, LCS
Ric Gaudet, LCS

Guests

The guest list is in the meeting file.

Absent

Sen. George K. Munoz, Vice Chair
Rep. Larry A. Larrañaga
Rep. Henry Kiki Saavedra
Sen. William P. Soules

Rep. William "Bill" J. Gray
Rep. Emily Kane
Rep. Tim D. Lewis
Rep. Patricia A. Lundstrom
Sen. William H. Payne
Sen. John C. Ryan
Sen. Michael S. Sanchez
Rep. Sheryl Williams Stapleton

Handouts

Handouts and other written testimony are in the meeting file.

Thursday, November 7

Recent Investment Performance of and Legislation Proposed by the State Investment Council (SIC)

Steven K. Moise, state investment officer, and Vince Smith, deputy state investment officer, SIC, discussed with the committee the investment performance of the SIC and proposed legislation. As of September 30, the SIC had \$17.84 billion in assets under management. The current calendar year investment returns show a 10.5 percent return, outpacing the 7.5 percent annual target. The SIC has realized \$1.7 billion in investment gains in 2013. Investment returns have been improving against policy indexes and benchmarks over time. However, the Severance Tax Permanent Fund (STPF) continues to lag behind market returns because that fund is required to invest a portion of its assets in New Mexico-based economically targeted investments (ETIs).

In 2011, the SIC studied its investment allocation strategy and subsequently adopted new allocation strategies designed to diversify its investment portfolio and to create more income. The SIC has been systematically decreasing its public equity exposure to decrease volatility, and it has been increasing investment in income-producing portfolios, including real assets, real estate and credit-based investments.

The SIC is seeking an amendment to the Constitution of New Mexico to allow more flexible investment standards for the Land Grant Permanent Fund (LGPF). The proposed amendment would eliminate the 15 percent maximum of investment of the fund in international securities and increase the standard of care for investment of the fund. The SIC is also currently looking at legislation to stabilize deposits into the STPF, which has not had significant deposits into the fund for many years. The state needs to gradually increase the amount deposited into the fund in order for it to remain a truly useful trust fund.

Questions and comments from committee members included the following.

- What would be the consequence of removing the 15 percent investment cap on international securities from the LGPF legislation? Charles Wollman, spokesperson, SIC, said that this change will not mean dramatic changes in the way the SIC invests the fund. The SIC would not be able to invest 75 percent of the fund in international securities, as was widely believed in the legislature during the past session.
- The SIC does not seem to like ETIs because their return is not as high as other investments. However, those investments have benefited the residents and economy of the state much more than could have been possible by just using the slightly larger distributions from the fund to invest in those activities.

The legislation proposed by the SIC, Draft #1 in the IPOC proposed legislation booklet, was endorsed unanimously by the committee.

Approval of Minutes

The minutes from the October 16, 2013 meeting of the committee were adopted without changes.

New Actuarial Valuations of the Educational Retirement Board (ERB)

Jan Goodwin, executive director, ERB, presented the actuarial valuation of the Educational Retirement Fund as of June 30, 2013 to the committee. The actuarial funded ratio declined from 60.7 percent to 60.1 percent from the previous year's valuation, and the unfunded actuarial accrued liability (UAAL) increased from \$6.2 billion to \$6.5 billion. These calculations are determined as of a single point in time and do not reflect recent legislation making dramatic changes to contribution levels and retirement benefits.

The actuarial valuation for 2013 reflects updates in the recently completed experience study, which made changes to assumptions about mortality, retirement and termination and decreased wage inflation and payroll growth. The valuation also reflects the total fiscal year 2009 asset loss during the recent recession. Future actuarial valuations should show gains in the funded ratio of the fund, said Ms. Goodwin.

Ms. Goodwin reported that for fiscal year 2013, the ERB will not be required to use a blended discount rate to determine its UAAL.

Questions and comments from committee members included the following.

- With the new accounting rules requiring blended discount rates for those portions of pension liability not contained in current assets, pension boards will be tempted to project higher return rates to minimize the blending requirement. Ms. Goodwin said that the ERB only uses the discount rate based on its own experience and based on actuary recommendations.
- Why is the ERB's UAAL projected to increase until 2028? Ms. Goodwin said that the increased employee and employer contribution rates will take some time to turn the fund's balance sheet around.

Proposed Legislation for Legislative Retirement Changes

Representative Garcia presented proposed legislation (Draft #5) for the committee's consideration that would eliminate legislative retirement for all new legislators beginning service on or after January 1, 2015 and would eliminate cost-of-living increases for retired legislators. Legislators and other public officials should serve the public and not themselves. Representative

Garcia said that no public official should receive a pension, and this legislation would be a first step in that direction.

After discussion of the merits of the bill by committee members, Representative Garcia withdrew the legislation from the committee's consideration.

Legislation Proposed by the Retiree Health Care Authority (RHCA)

Mark Tyndall, executive director, RHCA, presented proposed legislation (Draft #2) for the committee's consideration that would incrementally increase employer and employee contributions into the Retiree Health Care Fund. The fund is expected to run a deficit beginning in 2021 and will be completely depleted by 2029 under the current situation. The RHCA implemented many reforms to the retiree health care program, including increasing premiums, reducing certain subsidies, increasing cost-sharing and increasing the years of service required to obtain the maximum subsidy received. The biggest change to the solvency of the fund is increasing contribution levels, which requires legislative action.

The legislation would increase over six years employee and employer contributions by 57 percent. Employee contributions would increase from one percent of salary to 1.75 percent of salary, and employer contributions would increase from two percent of salary to 3.5 percent. The revenue generated from these contribution increases will extend the solvency of the fund through 2043.

Questions and comments from committee members included the following.

- What was the impact on the solvency of the fund by the reductions in state employee payroll over the past few years? Mr. Tyndall said that the fund lost three years of solvency from the reductions in state employment.
- The RHCA should consider a minimum age of 62 for employees before receiving subsidized benefits.
- One big reason the fund solvency is an issue today is that the previous administration drastically lowered premiums, which quickly expended much of the balance in the fund.

The committee endorsed the RHCA legislation on a vote of 5-3. The RHCA will find a sponsor for the bill.

New Actuarial Valuations and Funding Projections of the Public Employees Retirement Association (PERA)

Wayne Propst, executive director, PERA, presented the committee with a summary of the PERA fund's actuarial status. The fund reached an all-time high of \$13.8 billion in October, representing the recovery of all assets lost during the 2007-2009 market downturn. In fiscal year 2013, the fund had an investment gain of \$1.2 billion, a 13 percent gain. Passage of recent

legislation changing contribution levels and reducing the cost-of-living adjustment (COLA) had an immediate impact on the fund's UAAL, decreasing it from \$6.2 billion to \$4.6 billion. Before the legislation, the PERA fund was expected to be nearly insolvent by 2053, but it is now expected to be well above 100 percent solvency by that year.

Mr. Propst cautioned that the significant decrease in the PERA fund's UAAL was a one-time event. Future decreases will be more gradual. In addition, the PERA actuary will do a new experience study in 2014, which may change some of the assumptions made in determining funded ratios.

Questions and comments from committee members included the following.

- Employees got stuck with the biggest contribution increase of an additional 1.5 percent of salary, while employers will only pay .4 percent extra.
- Once the funded ratio of the PERA fund reaches 100 percent, it may be desirable to reduce employee contribution levels or to increase benefits.

Legislation Proposed by the Administrative Office of the Courts (AOC)

Chief Justice Petra Jimenez Maes, New Mexico Supreme Court, and Arthur W. Pepin, director, AOC, presented proposed legislation (Drafts #3 and #4) for the committee's consideration that would provide solvency for the judicial and magistrate retirement systems. Chief Justice Maes said that she had met with Governor Susana Martinez, and she hopes the governor will now support the legislation after vetoing similar legislation in 2013. Both bills made similar changes to various retirement provisions, including decreasing the service credit multiplier from 3.75 percent to 3.5 percent; increasing the maximum pension amount from 75 percent to 85 percent of final average salary (FAS); increasing employee contributions from nine percent to 10.5 percent of salary; increasing employer contributions to 15 percent of salary; using five years instead of one year to calculate the FAS; giving a two percent COLA only if the funded ratio of the fund (either the Judicial Retirement Fund or the Magistrate Retirement Fund, accordingly) exceeds 80 percent, but giving a two percent COLA every three years if the ratio threshold is not met; increasing the vesting threshold from five years to eight years; requiring employers to pay the employee contributions for nonparticipating judges and magistrates; and changing standard payment forms and survivor benefits to align better with regular PERA provisions. In order to make up for a serious shortfall in the Magistrate Retirement Fund, a one-time appropriation of \$5 million would be made to that fund. The main difference between the current proposals and the bill vetoed by the governor is that the current proposals do not switch the funding of judicial pensions from docket fees to general fund revenue.

Questions and comments from committee members included the following.

- It seems strange to use court docket fees to pay for judicial pensions.

- Does the PERA support the proposed legislation? Mr. Propst said that the PERA board of directors will consider endorsing the legislation later in November. The board did not endorse or oppose the previous legislation, but felt that more work was needed.
- Requiring nonparticipating judges and magistrates to make contributions, only to refund those contributions after the jurist leaves office, seems like a strange way of trying to generate extra revenue.

Draft #3, which makes changes to the Judicial Retirement Act, was endorsed by the committee unanimously.

Draft #4, which makes changes to the Magistrate Retirement Act, was endorsed by the committee 6-1, with an appropriation added.

Legislation Proposed by Legislators for Consideration of Endorsement

Senator Candelaria presented proposed legislation (Draft #5) for the committee's consideration that would impose a minimum age of 55 for legislative retirement.

Draft #5 was endorsed by the committee with changes.

Senator Keller withdrew consideration of Draft #7, a memorial requesting a study of the feasibility of combining state investment functions.

Adjournment

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

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ENDORSED LEGISLATION

1 SENATE JOINT RESOLUTION

2 51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

3 INTRODUCED BY

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8 ENDORSED BY THE INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

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10 A JOINT RESOLUTION

11 PROPOSING TO AMEND ARTICLE 12, SECTION 7 OF THE CONSTITUTION OF
12 NEW MEXICO TO PRESERVE THE LAND GRANT PERMANENT FUNDS BY
13 INCREASING THE DUTY OF CARE AND REMOVING THE RESTRICTIONS ON
14 THE TYPE OF INVESTMENT THAT MAY BE MADE.

15
16 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. It is proposed to amend Article 12, Section 7
18 of the constitution of New Mexico to read:

19 "A. As used in this section, "fund" means the
20 permanent school fund described in Article 12, Section 2 of
21 this [~~article~~] constitution and all other permanent funds
22 derived from lands granted or confirmed to the state by the act
23 of congress of June 20, 1910, entitled "An act to enable the
24 people of New Mexico to form a constitution and state
25 government and be admitted into the union on an equal footing

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1 with the original states.".

2 B. The fund shall be invested by the state
3 investment officer in accordance with policy regulations
4 promulgated by the state investment council.

5 C. In making investments, the state investment
6 officer, under the supervision of the state investment council,
7 shall ~~[exercise the judgment and care under the circumstances~~
8 ~~then prevailing that businessmen of ordinary prudence,~~
9 ~~discretion and intelligence exercise in the management of their~~
10 ~~own affairs not in regard to speculation but in regard to the~~
11 ~~permanent disposition of their funds, considering the probable~~
12 ~~income as well as the probable safety of their capital]~~ invest
13 and manage the fund in accordance with the Uniform Prudent
14 Investor Act.

15 D. The legislature may establish criteria for
16 investing the fund if the criteria are enacted by a
17 three-fourths' vote of the members elected to each house, but
18 investment of the fund is subject to the following
19 restrictions:

20 (1) not more than sixty-five percent of the
21 book value of the fund shall be invested at any given time in
22 corporate stocks;

23 (2) not more than ten percent of the voting
24 stock of a corporation shall be held; and

25 (3) stocks eligible for purchase shall be

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1 restricted to those stocks of businesses listed upon a national
2 stock exchange or included in a nationally recognized list of
3 stocks [~~and~~

4 ~~(4) not more than fifteen percent of the book~~
5 ~~value of the fund may be invested in international securities~~
6 ~~at any single time].~~

7 E. All additions to the fund and all earnings,
8 including interest, dividends and capital gains from investment
9 of the fund shall be credited to the fund.

10 F. Except as provided in Subsection G of this
11 section, the annual distributions from the fund shall be five
12 percent of the average of the year-end market values of the
13 fund for the immediately preceding five calendar years.

14 G. In addition to the annual distribution made
15 pursuant to Subsection F of this section, unless suspended
16 pursuant to Subsection H of this section, an additional annual
17 distribution shall be made pursuant to the following schedule;
18 provided that no distribution shall be made pursuant to the
19 provisions of this subsection in any fiscal year if the average
20 of the year-end market values of the fund for the immediately
21 preceding five calendar years is less than five billion eight
22 hundred million dollars (\$5,800,000,000):

23 (1) in fiscal years 2005 through 2012, an
24 amount equal to eight-tenths percent of the average of the
25 year-end market values of the fund for the immediately

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1 preceding five calendar years; provided that any additional
2 distribution from the permanent school fund pursuant to this
3 paragraph shall be used to implement and maintain educational
4 reforms as provided by law; and

5 (2) in fiscal years 2013 through 2016, an
6 amount equal to one-half percent of the average of the year-end
7 market values of the fund for the immediately preceding five
8 calendar years; provided that any additional distribution from
9 the permanent school fund pursuant to this paragraph shall be
10 used to implement and maintain educational reforms as provided
11 by law.

12 H. The legislature, by a three-fifths' vote of the
13 members elected to each house, may suspend any additional
14 distribution provided for in Subsection G of this section."

15 SECTION 2. The amendment proposed by this resolution
16 shall be submitted to the people for their approval or
17 rejection at the next general election or at any special
18 election prior to that date that may be called for that
19 purpose.

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BILL

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO HEALTH CARE; AMENDING THE RETIREE HEALTH CARE ACT BY INCREASING THE EMPLOYER AND EMPLOYEE CONTRIBUTION RATES PAID TO THE RETIREE HEALTH CARE FUND; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW BY REPEALING LAWS 2009, CHAPTER 287, SECTION 2.

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

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

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

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

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1 (1) for participating employees who are not
2 members of an enhanced retirement plan, the employer's
3 contribution shall equal:

4 (a) one and three-tenths percent of each
5 participating employee's salary for the period from July 1,
6 2002 through June 30, 2010;

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

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

13 (d) two percent of each participating
14 employee's salary ~~beginning~~ from July 1, 2012 through June
15 30, 2014;

16 (e) two and twenty-five hundredths
17 percent of each participating employee's salary from July 1,
18 2014 through June 30, 2015;

19 (f) two and one-half percent of each
20 participating employee's salary from July 1, 2015 through June
21 30, 2016;

22 (g) two and seventy-five hundredths
23 percent of each participating employee's salary from July 1,
24 2016 through June 30, 2017;

25 (h) three percent of each participating

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1 employee's salary from July 1, 2017 through June 30, 2018;

2 (i) three and twenty-five hundredths
3 percent of each participating employee's salary from July 1,
4 2018 through June 30, 2019; and

5 (j) three and one-half percent of each
6 participating employee's salary on and after July 1, 2019;

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

10 (a) one and three-tenths percent of each
11 participating employee's salary for the period from July 1,
12 2002 through June 30, 2010;

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

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

19 (d) two and one-half percent of each
20 participating employee's salary ~~[beginning July 1, 2012; and]~~
21 from July 1, 2012 through June 30, 2014;

22 (e) two and eighty-one hundredths
23 percent of each participating employee's salary from July 1,
24 2014 through June 30, 2015;

25 (f) three and thirteen-hundredths

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1 percent of each participating employee's salary from July 1,
2 2015 through June 30, 2016;

3 (g) three and forty-four hundredths
4 percent of each participating employee's salary from July 1,
5 2016 through June 30, 2017;

6 (h) three and seventy-five hundredths
7 percent of each participating employee's salary from July 1,
8 2017 through June 30, 2018;

9 (i) four and six-hundredths percent of
10 each participating employee's salary from July 1, 2018 through
11 June 30, 2019; and

12 (j) four and thirty-eight hundredths
13 percent of each participating employee's salary on and after
14 July 1, 2019; and

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

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

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

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

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

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

10 (d) one percent of the employee's salary
11 ~~[beginning]~~ from July 1, 2012 through June 30, 2015;

12 (e) one and one-fourth percent of the
13 employee's salary from July 1, 2015 through June 30, 2016;

14 (f) one and one-half percent of the
15 employee's salary from July 1, 2016 through June 30, 2017; and

16 (g) one and three-fourths percent of the
17 employee's salary on and after July 1, 2017;

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

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

24 (b) one and forty-two thousandths
25 percent of the employee's salary for the period from July 1,

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1 2010 through June 30, 2011;

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

5 (d) one and one-fourth percent of the
6 employee's salary ~~[beginning July 1, 2012; and]~~ from July 1,
7 2012 through June 30, 2015;

8 (e) one and fifty-six hundredths percent
9 of the employee's salary from July 1, 2015 through June 30,
10 2016;

11 (f) one and eighty-eight hundredths
12 percent of the employee's salary from July 1, 2016 through June
13 30, 2017; and

14 (g) two and nineteen-hundredths percent
15 of the employee's salary on and after July 1, 2017; and

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

24 C. On or after July 1, 2009, no person who has
25 obtained service credit pursuant to Subsection B of Section

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1 10-11-6 NMSA 1978, Section 10-11-7 NMSA 1978 or Paragraph (3)
2 or (4) of Subsection A of Section 22-11-34 NMSA 1978 may enroll
3 with the authority unless the person makes a contribution to
4 the fund equal to the full actuarial present value of the
5 amount of the increase in the person's health care benefit, as
6 determined by the authority.

7 D. Except for contributions made pursuant to
8 Subsection C of this section, a participating employer that
9 fails to remit before the tenth day after the last day of the
10 month all employer and employee deposits required by the
11 Retiree Health Care Act to be remitted by the employer for the
12 month shall pay to the fund, in addition to the deposits,
13 interest on the unpaid amounts at the rate of six percent per
14 year compounded monthly.

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

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

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1 participation in the Retiree Health Care Act.

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

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

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

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

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

18 (c) municipal fire member coverage plan
19 3, 4 or 5; or

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

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

24 SECTION 2. REPEAL.--Laws 2009, Chapter 287, Section 2 is
25 repealed.

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SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2014.

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BILL

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO PENSIONS; AMENDING JUDICIAL RETIREMENT ACT
PROVISIONS APPLICABLE TO CERTAIN MEMBERS BY CHANGING THE AGE
AND SERVICE REQUIREMENTS FOR NORMAL RETIREMENT, DECREASING THE
PENSION MULTIPLIER FOR SERVICE CREDIT EARNED AFTER JUNE 30,
2014, PROVIDING A TEMPORARY SUSPENSION OF AND DECREASE AND
DELAY OF THE COST-OF-LIVING ADJUSTMENT AND INCREASING THE
MAXIMUM PENSION BENEFIT; INCREASING CONTRIBUTION RATES;
CHANGING THE PENSION FORM OF PAYMENT.

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

SECTION 1. Section 10-12B-5 NMSA 1978 (being Laws 1992,
Chapter 111, Section 5, as amended) is amended to read:

"10-12B-5. SERVICE CREDIT--REINSTATEMENT OF FORFEITED
SERVICE--PRIOR SERVICE--MILITARY SERVICE.--

A. Personal service rendered by a member shall be

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1 credited to the member's service credit account in accordance
2 with board rules and regulations. Service shall be credited to
3 the nearest month. In no case shall any member be credited
4 with a year of service for less than twelve months of service
5 in any calendar year or more than a month of service for all
6 service in any calendar month or more than a year of service
7 for all service in any calendar year.

8 B. Service credit shall be forfeited if a member
9 leaves office and withdraws the member's accumulated member
10 contributions. A member or former member who is a member of a
11 state system or the educational retirement system who has
12 forfeited service credit by withdrawal of member contributions
13 may reinstate the forfeited service credit by repaying the
14 amount withdrawn plus compound interest from the date of
15 withdrawal to the date of repayment at a rate set by the board.
16 Withdrawn member contributions may be repaid in increments of
17 one year in accordance with procedures established by the
18 board. Full payment of each one-year increment shall be made
19 in a single lump-sum amount in accordance with procedures
20 established by the board.

21 C. Service credit that a member would have earned
22 if the member had not elected to be excluded from membership
23 may be purchased if the member pays the purchase cost
24 determined pursuant to the provisions of Subsection F of this
25 section.

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1 D. A member who during a term of office enters a
2 uniformed service of the United States shall be given service
3 credit for periods of service in the uniformed services subject
4 to the following conditions:

5 (1) the member returns to office within ninety
6 days following termination of the period of intervening service
7 in the uniformed services or the affiliated employer certifies
8 in writing to the association that the member is entitled to
9 reemployment rights under the federal Uniformed Services
10 Employment and Reemployment Rights Act of 1994;

11 (2) the member retains membership in the
12 association during the period of service in the uniformed
13 services;

14 (3) free service credit shall not be given for
15 periods of intervening service in the uniformed services
16 following voluntary reenlistment. Service credit for such
17 periods shall only be given after the member pays the
18 association the sum of the contributions that the person would
19 have been required to contribute had the person remained
20 continuously employed throughout the period of intervening
21 service following voluntary reenlistment, which payment shall
22 be made during the period beginning with the date of
23 reemployment and whose duration is three times the period of
24 the person's intervening service in the uniformed services
25 following voluntary reenlistment, not to exceed five years;

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1 (4) service credit shall not be given for
2 periods of intervening service in the uniformed services that
3 are used to obtain or increase a benefit from another state
4 system or the retirement program provided under the Educational
5 Retirement Act; and

6 (5) the member must not have received a
7 discharge or separation from uniformed service under other than
8 honorable conditions.

9 Notwithstanding any provision of this plan to the
10 contrary, contributions, benefits and service credit with
11 respect to qualified military service will be provided in
12 accordance with Section 414(u) of the Internal Revenue Code of
13 1986, as amended.

14 E. A member who entered uniformed service of the
15 United States may purchase service credit for periods of active
16 duty in the uniformed services, subject to the following
17 conditions:

18 (1) the member pays the purchase cost
19 determined pursuant to the provisions of Subsection F of this
20 section;

21 (2) the member has [~~five or more~~] the
22 applicable minimum number of years of service credit accrued
23 according to the provisions of the Judicial Retirement Act;

24 (3) the aggregate amount of service credit
25 purchased pursuant to the provisions of this subsection does

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1 not exceed five years, reduced by any period of service credit
2 acquired for military service under any other provision of the
3 Judicial Retirement Act;

4 (4) service credit may not be purchased for
5 periods of service in the uniformed services that are used to
6 obtain or increase a benefit from another retirement program;
7 and

8 (5) the member must not have received a
9 discharge or separation from uniformed service under other than
10 honorable conditions.

11 F. The purchase cost for each year of service
12 credit purchased pursuant to the provisions of this section
13 shall be the increase in the actuarial present value of the
14 pension of the member under the Judicial Retirement Act as a
15 consequence of the purchase, as determined by the association.
16 Full payment shall be made in a single lump-sum amount in
17 accordance with procedures established by the board. Except as
18 provided in Subsection G of this section, seventy-five percent
19 of the purchase cost shall be considered to be employer
20 contributions and shall not be refunded to the member in the
21 event of cessation of membership.

22 G. A member shall be refunded, after retirement and
23 upon written request filed with the association, the portion of
24 the purchase cost of service credit purchased pursuant to the
25 provisions of this section that the association determines to

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1 have been unnecessary to provide the member with the maximum
2 pension applicable to the member. The association shall not
3 pay interest on the portion of the purchase cost refunded to
4 the member.

5 H. At any time prior to retirement, a member may
6 purchase service credit in monthly increments, subject to the
7 following conditions:

8 (1) the member has [~~at least five~~] the
9 applicable minimum number of years of service credit acquired
10 as a result of personal service rendered under the Judicial
11 Retirement Act;

12 (2) the aggregate amount of service credit
13 purchased pursuant to this subsection does not exceed one year;

14 (3) the member pays full actuarial present
15 value of the amount of the increase in the member's pension as
16 a consequence of the purchase, as determined by the
17 association;

18 (4) the member pays the full cost of the
19 purchase within sixty days of the date the member is informed
20 of the amount of the payment; and

21 (5) the purchase of service credit under this
22 subsection cannot be used to exceed the pension maximum."

23 SECTION 2. Section 10-12B-6 NMSA 1978 (being Laws 1992,
24 Chapter 111, Section 6, as amended) is amended to read:

25 "10-12B-6. REFUND OF CONTRIBUTIONS--MEMBERS--NON-

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1 MEMBERS.--

2 A. If a member leaves office, the member may, with
3 the written consent of the member's spouse, if any, withdraw
4 the member's accumulated member contributions upon making
5 written request in a form prescribed by the association. Upon
6 written request of the member in the form prescribed by the
7 association, a refund of member contributions may be made by a
8 trustee-to-trustee transfer of the contributions from the
9 member contribution fund directly to another qualified plan as
10 allowed by the Internal Revenue Code of 1986. Withdrawal of
11 member contributions shall result in forfeiture of the service
12 credit accrued for the period during which the contributions
13 were made.

14 B. A member shall, upon commencement of membership,
15 designate a refund beneficiary who shall receive the refund of
16 the member contributions, plus interest, if the member dies and
17 no survivor pension is payable. If the member is married at
18 the time of designation, written spousal consent shall be
19 required if the designated refund beneficiary is a person other
20 than the spouse. Marriage subsequent to the designation shall
21 automatically revoke a previous designation, and the spouse
22 shall become the refund beneficiary unless or until another
23 designation is filed with the association. Divorce subsequent
24 to the designation shall automatically revoke designation of
25 the former spouse as refund beneficiary if no designation has

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1 been filed, and the refund shall be paid to the deceased
2 member's estate unless the member filed a designation of refund
3 beneficiary subsequent to the divorce. The refund shall be
4 paid to the refund beneficiary named in the most recent
5 designation of refund beneficiary on file with the association
6 unless that beneficiary is deceased. If there is not a living
7 refund beneficiary named in the most recent designation of
8 refund beneficiary on file with the association, the deceased
9 member's accumulated member contributions shall be paid to the
10 estate of the deceased member.

11 C. When a non-member leaves office, the non-member
12 may withdraw the non-member's accumulated employee
13 contributions upon making written request in a form prescribed
14 by the association. Upon such written request, a refund shall
15 be issued by the association of the non-member's employee
16 contributions, with interest at a rate as provided by rule
17 promulgated by the board."

18 SECTION 3. Section 10-12B-8 NMSA 1978 (being Laws 1992,
19 Chapter 111, Section 8, as amended) is amended to read:

20 "10-12B-8. AGE AND SERVICE CREDIT REQUIREMENTS FOR NORMAL
21 RETIREMENT.--

22 A. For an individual who initially became a member
23 prior to July 1, 2005, the age and service credit requirements
24 for retirement provided for in the Judicial Retirement Act are:

25 (1) age [~~sixty-four~~] sixty-five years or older

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1 and five or more years of service credit; or

2 (2) age sixty years or older and fifteen or
3 more years of service credit.

4 B. For an individual who initially became a member
5 ~~[on or]~~ after ~~[July 1]~~ June 30, 2005 but before June 30, 2014,
6 the age and service credit requirements for retirement provided
7 for in the Judicial Retirement Act are:

8 (1) age ~~[sixty-four]~~ sixty-five years or older
9 and five or more years of service credit; or

10 (2) age fifty-five or older and sixteen or
11 more years of service credit.

12 C. For an individual who initially becomes a member
13 on or after July 1, 2014, the age and service requirements
14 provided for in the Judicial Retirement Act are:

15 (1) age sixty-five years and eight or more
16 years of service credit; or

17 (2) age sixty years and fifteen or more years
18 of service credit.

19 ~~[G.]~~ D. If a member leaves office for any reason,
20 other than removal pursuant to Article 6, Section 32 of the
21 constitution of New Mexico, before meeting the age and service
22 credit requirements for retirement pursuant to the provisions
23 of this section and if that member leaves ~~[his]~~ the member
24 contributions on deposit in the fund, that member may apply for
25 retirement when that member meets the age and service credit

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1 requirements for retirement pursuant to the provisions of the
2 Judicial Retirement Act or provisions of the Public Employees
3 Retirement Reciprocity Act.

4 ~~[D-]~~ E. No member shall be eligible to receive a
5 pension pursuant to the provisions of the Judicial Retirement
6 Act while still in office."

7 **SECTION 4.** Section 10-12B-9 NMSA 1978 (being Laws 1992,
8 Chapter 111, Section 9, as amended) is amended to read:

9 "10-12B-9. AMOUNT OF PENSION.--The amount of monthly
10 pension is equal to:

11 A. in the case of a former or current judge or
12 justice, an amount equal to one-twelfth of:

13 seventy-five percent
14 of salary received X number of years of
15 during last year in service, not exceeding
16 office prior to ten years, divided
17 retirement by ten;

18 B. in the case of a new judge or justice who
19 initially became a member prior to July 1, 2005:

20 (1) for service credit earned on or before
21 June 30, 2014, an amount equal to one-twelfth of:

22 seventy-five (number of years of
23 percent of salary service, not
24 received during X .05 X exceeding fifteen
25 last year in office years, plus five

1 prior to retirement years); ~~or~~ and

2 (2) for service credit earned on and after
3 July 1, 2014, an amount equal to one-twelfth of the salary
4 received during the last year in office prior to retirement
5 multiplied by the product of three and one-half percent times
6 the sum of the number of years of service; provided that a
7 pension calculated pursuant to this subsection shall not exceed
8 eighty-five percent of one-twelfth of the salary received
9 during the last year in office;

10 C. in the case of a new judge or justice who
11 initially became a member ~~on or~~ after ~~July 1~~ June 30, 2005
12 but before June 30, 2014:

13 (1) for service credit earned on or before
14 June 30, 2014, an amount equal to one-twelfth of the salary
15 received during the last year in office prior to retirement
16 multiplied by the product of three and seventy-five hundredths
17 percent times the sum of the number of years of service;
18 provided that a pension calculated pursuant to this subsection
19 shall not exceed seventy-five percent of one-twelfth of the
20 salary received during the last year in office; and

21 (2) for service credit earned on and after
22 July 1, 2014, an amount equal to one-twelfth of the salary
23 received during the last year in office prior to retirement
24 multiplied by the product of three and one-half percent times
25 the sum of the number of years of service; provided that a

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1 pension calculated pursuant to this subsection shall not exceed
2 eighty-five percent of one-twelfth of the salary received
3 during the last year in office; or

4 D. in the case of a new judge or justice who
5 initially becomes a member on or after July 1, 2014, an amount
6 equal to one-twelfth of the greatest aggregate amount of the
7 salary received during the last year in office prior to
8 retirement multiplied by the product of three and one-half
9 percent times the sum of the number of years of service;
10 provided that a pension calculated pursuant to this subsection
11 shall not exceed eighty-five percent of one-twelfth of the
12 salary received during the last year in office."

13 SECTION 5. Section 10-12B-10 NMSA 1978 (being Laws 1992,
14 Chapter 111, Section 10, as amended) is amended to read:

15 "10-12B-10. MEMBER CONTRIBUTIONS--TAX TREATMENT.--

16 A. On and after July 1, 2014, members and non-
17 members, while in office, shall contribute ten and one-half
18 percent of salary to the member contribution fund [~~pursuant to~~
19 ~~the following schedule:~~

20 ~~(1) prior to July 1, 2005, five and one-half~~
21 ~~percent of salary;~~

22 ~~(2) from July 1, 2005 through June 30, 2006,~~
23 ~~six and one-half percent of salary; and~~

24 ~~(3) on and after July 1, 2006, seven and one-~~
25 ~~half percent of salary, except that for members whose annual~~

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1 ~~salary is greater than twenty thousand dollars (\$20,000):~~

2 ~~(a) from July 1, 2009 through June 30,~~
3 ~~2011, the member contribution rate shall be nine percent of~~
4 ~~salary;~~

5 ~~(b) from July 1, 2011 through June 30,~~
6 ~~2012, the member contribution rate shall be ten and three-~~
7 ~~fourths percent of salary; and~~

8 ~~(c) from July 1, 2012 through June 30,~~
9 ~~2013, the member contribution rate shall be nine percent of~~
10 ~~salary].~~

11 B. Upon implementation, the state, acting as
12 employer of members covered pursuant to the provisions of the
13 Judicial Retirement Act, shall, solely for the purpose of
14 compliance with Section 414(h) of the Internal Revenue Code of
15 1986, pick up, for the purposes specified in that section,
16 member contributions required by this section for all annual
17 salary earned by the member. Member contributions picked up
18 pursuant to the provisions of this section shall be treated as
19 employer contributions for purposes of determining income tax
20 obligations under the Internal Revenue Code of 1986; however,
21 such picked-up member contributions shall be included in the
22 determination of the member's gross annual salary for all other
23 purposes under federal and state laws. Member contributions
24 picked up pursuant to the provisions of this section shall
25 continue to be designated member contributions for all purposes

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1 of the Judicial Retirement Act and shall be considered as part
2 of the member's annual salary for purposes of determining the
3 amount of the member's contribution. The provisions of this
4 section are mandatory, and the member shall have no option
5 concerning the pickup or concerning the receipt of the
6 contributed amounts directly instead of having the amounts paid
7 by the employer to the retirement system. Implementation
8 occurs upon authorization by the board. In no event may
9 implementation occur other than at the beginning of a pay
10 period applicable to the member."

11 SECTION 6. Section 10-12B-11 NMSA 1978 (being Laws 1992,
12 Chapter 111, Section 11, as amended) is amended to read:

13 "10-12B-11. EMPLOYER CONTRIBUTIONS.--

14 A. The member's or non-member's court shall
15 contribute [~~the following amounts~~] fifteen percent of salary to
16 the fund for each member or non-member in office.

17 [~~(1) prior to July 1, 2005, nine percent of~~
18 ~~salary for each member in office;~~

19 [~~(2) from July 1, 2005 through June 30, 2006,~~
20 ~~ten and one-half percent of salary for each member in office;~~
21 and

22 [~~(3) on and after July 1, 2006, twelve percent~~
23 ~~of salary for each member in office, except that for members~~
24 ~~whose annual salary is greater than twenty thousand dollars~~
25 ~~(\$20,000):~~

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1 ~~(a) from July 1, 2009 through June 30,~~
2 ~~2011, the member's court contribution rate shall be ten and~~
3 ~~one-half percent of salary for each member in office;~~

4 ~~(b) from July 1, 2011 through June 30,~~
5 ~~2012, the member's court contribution rate shall be eight and~~
6 ~~three-fourths percent of salary for each member in office; and~~

7 ~~(c) from July 1, 2012 through June 30,~~
8 ~~2013, the member's court contribution rate shall be ten and~~
9 ~~one-half percent of salary for each member in office]~~

10 B. Thirty-eight dollars (\$38.00) from each civil
11 case docket fee paid in the district court, twenty-five dollars
12 (\$25.00) from each civil docket fee paid in metropolitan court
13 and ten dollars (\$10.00) from each jury fee paid in
14 metropolitan court shall be paid by the court clerk to the
15 employer's accumulation fund."

16 SECTION 7. Section 10-12B-13 NMSA 1978 (being Laws 1992,
17 Chapter 111, Section 13) is amended to read:

18 "10-12B-13. DISABILITY RETIREMENT PENSION.--

19 A. A judge or justice with [~~five~~] the applicable
20 minimum number of years [~~or more~~] of service credit accrued
21 pursuant to the provisions of the Judicial Retirement Act who
22 becomes unable to carry out the duties of that office due to
23 physical or mental disability shall, upon determination of the
24 disability and relinquishment of office, receive a pension from
25 the fund so long as the disability continues. Determination of

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1 disability shall be made by the board in accordance with the
2 provisions of the Public Employees Retirement Act and rules
3 promulgated [~~thereunder~~] pursuant to that act.

4 B. The amount of the pension shall be calculated
5 using the formula for normal retirement set out in Section [9
6 ~~of the Judicial Retirement Act~~] 10-12B-9 NMSA 1978.

7 C. The [~~five-year~~] applicable service credit
8 requirement shall be waived if the board finds the disability
9 to have been the natural and proximate result of causes arising
10 solely and exclusively out of and in the course of the member's
11 performance of duty as a judge or justice, and the amount of
12 pension shall be computed as if the member had [~~five~~] the
13 applicable minimum number of years of service credit as a judge
14 or justice."

15 SECTION 8. Section 10-12B-14 NMSA 1978 (being Laws 1992,
16 Chapter 111, Section 14) is amended to read:

17 "10-12B-14. [~~SURVIVOR'S~~] ELECTION OF PENSION PAYMENT--
18 FORM OF PAYMENT.--

19 [~~A. Unless a member has designated a survivor~~
20 ~~beneficiary in accordance with Subsection B of this section, a~~
21 ~~survivor pension shall be paid for life to a member's or~~
22 ~~retired member's surviving spouse.~~

23 B. ~~A member may designate, in writing in a form~~
24 ~~prescribed by the association, a survivor beneficiary to~~
25 ~~receive the survivor's pension described in this section. If~~

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1 ~~the member is married, a designation of survivor beneficiary~~
2 ~~other than the member's spouse may only be made with the~~
3 ~~written consent of the member's spouse. Marriage subsequent to~~
4 ~~a designation of survivor beneficiary shall automatically~~
5 ~~revoke the designation of survivor beneficiary. A designation~~
6 ~~of survivor beneficiary made pursuant to a court order issued~~
7 ~~under Section 7 of the Judicial Retirement Act shall not~~
8 ~~require the consent of the member's spouse, if any, and shall~~
9 ~~not be revoked by the subsequent remarriage of the member. A~~
10 ~~designation of survivor beneficiary may be revoked by the~~
11 ~~member at any time prior to the member's retirement. If the~~
12 ~~member is married, a revocation of designation of survivor~~
13 ~~beneficiary may only be made with the written consent of the~~
14 ~~member's spouse.~~

15 ~~G. If there is no surviving spouse and no~~
16 ~~designated survivor beneficiary or if the surviving spouse dies~~
17 ~~while there are still minor and dependent children of the~~
18 ~~member, the survivor's pension shall be paid to all minor and~~
19 ~~dependent children, if any, of the member, in equal shares, so~~
20 ~~long as each child remains a minor or dependent child. As each~~
21 ~~child ceases to be a minor or dependent child, the number of~~
22 ~~shares shall be reduced and the amount payable to each~~
23 ~~remaining child increased proportionately so that the total~~
24 ~~survivor's pension remains unchanged as long as there is any~~
25 ~~such child.~~

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1 D. ~~The survivor's pension is equal to seventy-five~~
2 ~~percent of the member's pension.~~

3 E. ~~Survivor beneficiaries shall be eligible for~~
4 ~~other benefits provided pursuant to the provisions of the~~
5 ~~Judicial Retirement Act, including cost-of-living adjustments~~
6 ~~and continuation of group insurance benefits.~~

7 F. ~~If a member dies while receiving a disability~~
8 ~~retirement pension, the survivor beneficiary shall receive the~~
9 ~~survivor pension provided pursuant to the provisions of the~~
10 ~~Judicial Retirement Act.] A member's pension form of payment~~
11 ~~shall be determined pursuant to the provisions of Sections~~
12 ~~10-11-116 and 10-11-117 NMSA 1978."~~

13 SECTION 9. Section 10-12B-15 NMSA 1978 (being Laws 1992,
14 Chapter 111, Section 15) is amended to read:

15 "10-12B-15. COST-OF-LIVING ADJUSTMENT.--A [~~yearly cost-~~
16 ~~of-living adjustment shall be made to each pension]~~ qualified
17 pension recipient is eligible for a cost-of-living adjustment
18 payable pursuant to the provisions of the Judicial Retirement
19 Act as [~~provided in the Public Employees Retirement Act]~~
20 follows:

21 A. beginning July 1, 2014 and continuing through
22 June 30, 2016, there shall not be a cost-of-living adjustment
23 applied to a pension payable pursuant to the Judicial
24 Retirement Act; and

25 B. beginning on May 1, 2016 and no later than each

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1 May 1 thereafter:

2 (1) the board shall certify to the association
3 the actuarial funded ratio of the fund as of June 30 of the
4 preceding calendar year;

5 (2) if, pursuant to Paragraph (1) of this
6 subsection, the certified funded ratio is greater than or equal
7 to eighty percent, the board shall next certify the projected
8 funded ratio of the fund on July 1 of the next succeeding
9 calendar year if, effective July 1 of the current calendar
10 year, a cost-of-living increase of two percent is applied to
11 all payable pensions; and

12 (3) on each July 1 following the board's
13 certification of the funded ratio, the cost-of-living
14 adjustment, if any, applied to a pension payable pursuant to
15 the Judicial Retirement Act shall be determined as follows:

16 (a) if, pursuant to Paragraph (1) of
17 this subsection, the funded ratio of the fund is greater than
18 or equal to eighty percent, and if, pursuant to Paragraph (2)
19 of this subsection, the projected funded ratio is greater than
20 or equal to eighty percent, the amount of pension payable
21 beginning July 1 of the next fiscal year shall be increased two
22 percent. The amount of the increase shall be determined by
23 multiplying the amount of the pension inclusive of all prior
24 adjustments by two percent; and

25 (b) if the funded ratio of the fund, as

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1 certified pursuant to Paragraph (1) or (2) of this subsection,
2 is less than eighty percent, the amount of pension payable
3 shall not include a cost-of-living increase; provided, however,
4 that if, pursuant to the provisions of this subsection, the
5 cost-of-living adjustment is suspended for the two consecutive
6 fiscal years immediately prior to the most recent certification
7 by the board of the funded ratio: 1) the amount of pension
8 payable in the fiscal year immediately following the two-year
9 suspension shall be increased two percent regardless of the
10 certified funded ratio; and 2) thereafter, if, pursuant to the
11 provisions of Paragraph (1) of this subsection, the certified
12 funded ratio is less than eighty percent, the provisions of
13 this subsection shall apply without exception in the next
14 succeeding fiscal year."

15 SECTION 10. A new Section 10-12B-15.1 NMSA 1978 is
16 enacted to read:

17 "10-12B-15.1. [NEW MATERIAL] QUALIFIED PENSION
18 RECIPIENT--COST-OF-LIVING-ADJUSTMENT WAIT PERIOD--DECLINING
19 INCREASE.--

20 A. Pursuant to the Judicial Retirement Act, a
21 qualified pension recipient is a:

22 (1) normal retired member who retires:

23 (a) before June 30, 2014 and has been
24 retired for at least two full calendar years from the effective
25 date of the latest retirement prior to July 1 of the year in

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1 which the pension is being adjusted;

2 (b) between July 1, 2014 and June 30,
3 2016 and has been retired for at least three full calendar
4 years from the effective date of the latest retirement prior to
5 July 1 of the year in which the pension is being adjusted;

6 (c) between July 1, 2015 and June 30,
7 2017 and has been retired for at least four full calendar years
8 from the effective date of the latest retirement prior to July
9 1 of the year in which the pension is being adjusted; or

10 (d) on or after July 1, 2016 and has
11 been retired for at least seven full calendar years from the
12 effective date of the latest retirement prior to July 1 of the
13 year in which the pension is being adjusted;

14 (2) normal retired member who is at least
15 sixty-five years of age and has been retired for at least one
16 full calendar year from the effective date of the latest
17 retirement prior to July 1 of the year in which the pension is
18 being adjusted;

19 (3) disability retired member who has been
20 retired for at least one full calendar year from the effective
21 date of the latest retirement prior to July 1 of the year in
22 which the pension is being adjusted;

23 (4) survivor beneficiary who has received a
24 survivor pension for at least two full calendar years; or

25 (5) survivor beneficiary of a deceased retired

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1 member who otherwise would have been retired at least two full
2 calendar years from the effective date of the latest retirement
3 prior to July 1 of the year in which the pension is being
4 adjusted.

5 B. A qualified pension recipient may decline an
6 increase in a pension by giving the association written notice
7 of the decision to decline the increase at least thirty days
8 prior to the date the increase would take effect."

9 SECTION 11. SEVERABILITY.--If any part or application of
10 this act is held invalid, the remainder or its application to
11 other situations or persons shall not be affected.

12 SECTION 12. EFFECTIVE DATE.--The effective date of the
13 provisions of this act is July 1, 2014.

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HOUSE BILL

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO PENSIONS; AMENDING MAGISTRATE RETIREMENT ACT
PROVISIONS APPLICABLE TO CERTAIN MEMBERS BY CHANGING THE AGE
AND SERVICE REQUIREMENTS FOR NORMAL RETIREMENT, DECREASING THE
PENSION MULTIPLIER FOR SERVICE CREDIT EARNED AFTER JUNE 30,
2014, PROVIDING A TEMPORARY SUSPENSION OF AND DECREASE AND
DELAY OF THE COST-OF-LIVING ADJUSTMENT; INCREASING THE MAXIMUM
PENSION BENEFIT AND CHANGING THE PENSION FORM OF PAYMENT;
INCREASING CONTRIBUTION RATES; CHANGING THE PENSION FORM OF
PAYMENT.

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

SECTION 1. Section 10-12C-5 NMSA 1978 (being Laws 1992,
Chapter 118, Section 5, as amended) is amended to read:

"10-12C-5. SERVICE CREDIT--REINSTATEMENT OF FORFEITED
SERVICE--PRIOR SERVICE--MILITARY SERVICE.--

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1 A. Personal service rendered by a member shall be
2 credited to the member's service credit account in accordance
3 with board rules and regulations. Service shall be credited to
4 the nearest month. In no case shall any member be credited
5 with a year of service for less than twelve months of service
6 in any calendar year or more than a month of service for all
7 service in any calendar month or more than a year of service
8 for all service in any calendar year.

9 B. Service credit shall be forfeited if a member
10 leaves office and withdraws the member's accumulated member
11 contributions. A member or former member who is a member of
12 another state system or the educational retirement system who
13 has forfeited service credit by withdrawal of member
14 contributions may reinstate the forfeited service credit by
15 repaying the amount withdrawn plus compound interest from the
16 date of withdrawal to the date of repayment at a rate set by
17 the board. Withdrawn member contributions may be repaid in
18 increments of one year in accordance with procedures
19 established by the board. Full payment of each one-year
20 increment shall be made in a single lump-sum amount in
21 accordance with procedures established by the board.

22 C. Service credit that a member would have earned
23 if the member had not elected to be excluded from membership
24 may be purchased if the member pays the purchase cost
25 determined pursuant to the provisions of Subsection F of this

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1 section.

2 D. A member who during a term of office enters a
3 uniformed service of the United States shall be given service
4 credit for periods of service in the uniformed services subject
5 to the following conditions:

6 (1) the member returns to office within ninety
7 days following termination of the period of intervening service
8 in the uniformed services or the affiliated employer certifies
9 in writing to the association that the member is entitled to
10 reemployment rights under the federal Uniformed Services
11 Employment and Reemployment Rights Act of 1994;

12 (2) the member retains membership in the
13 association during the period of service in the uniformed
14 services;

15 (3) free service credit shall not be given for
16 periods of intervening service in the uniformed services
17 following voluntary reenlistment. Service credit for such
18 periods shall only be given after the member pays the
19 association the sum of the contributions that the person would
20 have been required to contribute had the person remained
21 continuously employed throughout the period of intervening
22 service following voluntary reenlistment, which payment shall
23 be made during the period beginning with the date of
24 reemployment and whose duration is three times the period of
25 the person's intervening service in the uniformed services

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1 following voluntary reenlistment, not to exceed five years;

2 (4) service credit shall not be given for
3 periods of intervening service in the uniformed services that
4 are used to obtain or increase a benefit from another state
5 system or the retirement program provided under the Educational
6 Retirement Act; and

7 (5) the member must not have received a
8 discharge or separation from uniformed service under other than
9 honorable conditions.

10 Notwithstanding any provision of this plan to the
11 contrary, contributions, benefits and service credit with
12 respect to qualified military service will be provided in
13 accordance with Section 414(u) of the Internal Revenue Code of
14 1986, as amended.

15 E. A member who entered a uniformed service of the
16 United States may purchase service credit for periods of active
17 duty in the uniformed services, subject to the following
18 conditions:

19 (1) the member pays the purchase cost
20 determined pursuant to the provisions of Subsection F of this
21 section;

22 (2) the member has [~~five or more~~] the
23 applicable minimum number of years of service credit accrued
24 according to the provisions of the Magistrate Retirement Act;

25 (3) the aggregate amount of service credit

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1 purchased pursuant to the provisions of this subsection does
2 not exceed five years, reduced by any period of service credit
3 acquired for military service under any other provision of the
4 Magistrate Retirement Act;

5 (4) service credit may not be purchased for
6 periods of service in the uniformed services that are used to
7 obtain or increase a benefit from another retirement program;
8 and

9 (5) the member must not have received a
10 discharge or separation from uniformed service under other than
11 honorable conditions.

12 F. The purchase cost for each year of service
13 credit purchased pursuant to the provisions of this section
14 shall be the increase in the actuarial present value of the
15 pension of the member under the Magistrate Retirement Act as a
16 consequence of the purchase, as determined by the association.
17 Full payment shall be made in a single lump-sum amount in
18 accordance with procedures established by the board. Except as
19 provided in Subsection G of this section, seventy-five percent
20 of the purchase cost shall be considered to be employer
21 contributions and shall not be refunded to the member in the
22 event of cessation of membership.

23 G. A member shall be refunded, after retirement and
24 upon written request filed with the association, the portion of
25 the purchase cost of service credit purchased pursuant to the

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1 provisions of this section that the association determines to
2 have been unnecessary to provide the member with the maximum
3 pension applicable to the member. The association shall not
4 pay interest on the portion of the purchase cost refunded to
5 the member.

6 H. At any time prior to retirement, a member may
7 purchase service credit in monthly increments, subject to the
8 following conditions:

9 (1) the member has [~~at least five~~] the
10 applicable minimum number of years of service credit acquired
11 as a result of personal service rendered under the Magistrate
12 Retirement Act;

13 (2) the aggregate amount of service credit
14 purchased pursuant to this subsection does not exceed one year;

15 (3) the member pays full actuarial present
16 value of the amount of the increase in the member's pension as
17 a consequence of the purchase, as determined by the
18 association;

19 (4) the member pays the full cost of the
20 purchase within sixty days of the date the member is informed
21 of the amount of the payment; and

22 (5) the purchase of service credit under this
23 subsection cannot be used to exceed the pension maximum."

24 SECTION 2. Section 10-12C-6 NMSA 1978 (being Laws 1992,
25 Chapter 118, Section 6, as amended) is amended to read:

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1 "10-12C-6. REFUND OF CONTRIBUTIONS.--

2 A. If a member leaves office, the member may, with
3 the written consent of the member's spouse, if any, withdraw
4 the member's accumulated member contributions, upon making
5 written request in a form prescribed by the association. Upon
6 written request of the member in the form prescribed by the
7 association, a refund of member contributions may be made by a
8 trustee-to-trustee transfer of the contributions from the
9 member contribution fund directly to another qualified plan as
10 allowed by the Internal Revenue Code of 1986. Withdrawal of
11 member contributions shall result in forfeiture of the service
12 credit accrued for the period during which the contributions
13 were made.

14 B. A member shall, upon commencement of membership,
15 designate a refund beneficiary who shall receive the refund of
16 the member contributions, plus interest if any, if the member
17 dies and no survivor pension is payable. If the member is
18 married at the time of designation, written spousal consent
19 shall be required if the designated refund beneficiary is a
20 person other than the spouse. Marriage subsequent to the
21 designation shall automatically revoke a previous designation,
22 and the spouse shall become the refund beneficiary unless or
23 until another designation is filed with the association.
24 Divorce subsequent to the designation shall automatically
25 revoke designation of the former spouse as refund beneficiary,

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1 or the right of the former spouse to be refund beneficiary if
2 no designation has been filed, and the refund shall be paid to
3 the deceased member's estate unless the member filed a
4 designation of refund beneficiary subsequent to the divorce.
5 The refund shall be paid to the refund beneficiary named in the
6 most recent designation of refund beneficiary on file with the
7 association unless that beneficiary is deceased. If there is
8 not a living refund beneficiary named in the most recent
9 designation of refund beneficiary on file with the association,
10 the deceased member's accumulated member contributions shall be
11 paid to the estate of the deceased member.

12 C. When a non-member leaves office, the non-member
13 may withdraw the non-member's accumulated employee
14 contributions upon making written request in a form prescribed
15 by the association. Upon such written request, a refund shall
16 be issued by the association of the non-member's employee
17 contributions, with interest at a rate as provided by rule
18 promulgated by the board."

19 SECTION 3. Section 10-12C-8 NMSA 1978 (being Laws 1992,
20 Chapter 118, Section 8) is amended to read:

21 "10-12C-8. AGE AND SERVICE CREDIT REQUIREMENTS FOR NORMAL
22 RETIREMENT.--

23 A. For a magistrate who was a member on June 30,
24 2014, the age and service credit requirements for retirement
25 provided for in the Magistrate Retirement Act are:

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1 (1) age [~~sixty-four~~] sixty-five years or older
2 and five or more years of service credit;

3 (2) age sixty years or older and fifteen or
4 more years of service credit; or

5 (3) any age and twenty-four or more years of
6 service credit.

7 B. For a magistrate who initially became a member
8 on or after July 1, 2014, the age and service requirements for
9 normal retirement provided for in the Magistrate Retirement Act
10 are:

11 (1) age sixty-five years or older and eight or
12 more years of service credit;

13 (2) age sixty years and fifteen or more years
14 of service credit; and

15 (3) any age and twenty-four or more years of
16 service credit.

17 [~~B.~~] C. If a member leaves office for any reason,
18 other than removal pursuant to Article 6, Section 32 of the
19 constitution of New Mexico before meeting the age and service
20 credit requirements for retirement pursuant to the provisions
21 of this section and if that member leaves [~~his~~] the member
22 contributions on deposit in the fund, that member may apply for
23 retirement when that member meets the age and service credit
24 requirements for retirement pursuant to the provisions of the
25 Magistrate Retirement Act or provisions of the Public Employees

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1 Retirement Reciprocity Act. [~~if enacted by the second session~~
2 ~~of the fortieth legislature of the state of New Mexico.~~

3 G.] D. No member shall be eligible to receive a
4 pension pursuant to the provisions of the Magistrate Retirement
5 Act while still in office."

6 SECTION 4. Section 10-12C-9 NMSA 1978 (being Laws 1992,
7 Chapter 118, Section 9) is amended to read:

8 "10-12C-9. AMOUNT OF PENSION.--

9 A. For a magistrate who was a member on June 30,
10 2014:

11 (1) for service credit earned on or before
12 June 30, 2014, the amount of pension is equal to one-twelfth
13 of:

14 seventy-five percent
15 of salary received (number of years of
16 during last year in X .05 X service, not exceeding
17 office prior to fifteen years, [+]
18 retirement plus five years); and

19 (2) for service credit earned on and after
20 July 1, 2014, the amount of pension is equal to one-twelfth of
21 the salary received during the last year in office prior to
22 retirement multiplied by the product of three and one-half
23 percent times the sum of the number of years of service;
24 provided that a pension calculated pursuant to this subsection
25 shall not exceed eighty-five percent of one-twelfth of the

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1 salary received during the last year in office.

2 B. For a magistrate who initially became a member
3 on or after July 1, 2014, the amount of pension is equal to
4 one-twelfth of the greatest aggregate amount of the salary
5 received during the last year in office prior to retirement,
6 multiplied by the product of three and one-half percent times
7 the sum of the number of years of service; provided that a
8 pension calculated pursuant to this subsection shall not exceed
9 eighty-five percent of one-twelfth of the salary received
10 during the last year in office."

11 SECTION 5. Section 10-12C-10 NMSA 1978 (being Laws 1992,
12 Chapter 118, Section 10, as amended) is amended to read:

13 "10-12C-10. MEMBER CONTRIBUTIONS--TAX TREATMENT.--

14 A. Members and non-members, while in office, shall
15 contribute [~~the following amounts~~] ten and one-half percent of
16 salary to the member contribution fund.

17 [~~(1) through June 30, 2006, six and one-half~~
18 ~~percent of salary; and~~

19 [~~(2) on and after July 1, 2006, seven and one-~~
20 ~~half percent of salary, except that for members whose annual~~
21 ~~salary is greater than twenty thousand dollars (\$20,000):~~

22 [~~(a) from July 1, 2009 through June 30,~~
23 ~~2011, the member contribution rate shall be nine percent of~~
24 ~~salary;~~

25 [~~(b) from July 1, 2011 through June 30,~~

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1 ~~2012, the member contribution rate shall be ten and three-~~
2 ~~fourths percent of salary; and~~

3 ~~(c) from July 1, 2012 through June 30,~~
4 ~~2013, the member contribution rate shall be nine percent of~~
5 ~~salary]~~

6 B. Upon implementation, the state, acting as
7 employer of members covered pursuant to the provisions of the
8 Magistrate Retirement Act, shall, solely for the purpose of
9 compliance with Section 414(h) of the Internal Revenue Code of
10 1986, pick up, for the purposes specified in that section,
11 member contributions required by this section for all annual
12 salary earned by the member. Member contributions picked up
13 pursuant to the provisions of this section shall be treated as
14 employer contributions for purposes of determining income tax
15 obligations under the Internal Revenue Code of 1986; however,
16 such picked-up member contributions shall be included in the
17 determination of the member's gross annual salary for all other
18 purposes under federal and state laws. Member contributions
19 picked up pursuant to the provisions of this section shall
20 continue to be designated member contributions for all purposes
21 of the Magistrate Retirement Act and shall be considered as
22 part of the member's annual salary for purposes of determining
23 the amount of the member's contribution. The provisions of
24 this section are mandatory, and the member shall have no option
25 concerning the pick up or concerning the receipt of the

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1 contributed amounts directly instead of having the amounts paid
2 by the employer to the retirement system. Implementation
3 occurs upon authorization by the board. In no event may
4 implementation occur other than at the beginning of a pay
5 period applicable to the member."

6 SECTION 6. Section 10-12C-11 NMSA 1978 (being Laws 1992,
7 Chapter 118, Section 11, as amended) is amended to read:

8 "10-12C-11. EMPLOYER CONTRIBUTIONS.--

9 A. The state, through the administrative office of
10 the courts, shall contribute [~~the following amounts~~] to the
11 fund fifteen percent of salary for each member and non-member
12 in office.

13 [~~(1) through June 30, 2006, ten percent of~~
14 ~~salary for each member in office; and~~

15 [~~(2) on and after July 1, 2006, eleven percent~~
16 ~~of salary for each member in office, except that for members~~
17 ~~whose annual salary is greater than twenty thousand dollars~~
18 ~~(\$20,000):~~

19 [~~(a) from July 1, 2009 through June 30,~~
20 ~~2011, the state contribution rate shall be nine and one-half~~
21 ~~percent of salary for each member in office;~~

22 [~~(b) from July 1, 2011 through June 30,~~
23 ~~2012, the state contribution rate shall be seven and three-~~
24 ~~fourths percent of salary for each member in office; and~~

25 [~~(c) from July 1, 2012 through June 30,~~

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1 ~~2013, the state contribution rate shall be nine and one-half~~
2 ~~percent of salary for each member in office]~~

3 B. Twenty-five dollars (\$25.00) from each civil
4 case docket fee paid in magistrate court and ten dollars
5 (\$10.00) from each civil jury fee paid in magistrate court
6 shall be paid by the court clerk to the employer's accumulation
7 fund."

8 SECTION 7. Section 10-12C-12 NMSA 1978 (being Laws 1992,
9 Chapter 118, Section 12) is amended to read:

10 "10-12C-12. DISABILITY RETIREMENT PENSION.--

11 A. A magistrate with [~~five~~] the applicable minimum
12 number of years [~~or more~~] of service credit accrued pursuant to
13 the provisions of the Magistrate Retirement Act who becomes
14 unable to carry out the duties of that office due to physical
15 or mental disability shall, upon determination of the
16 disability and relinquishment of office, receive a pension from
17 the fund so long as the disability continues. Determination of
18 disability shall be made by the board in accordance with the
19 provisions of the Public Employees Retirement Act and rules
20 promulgated [~~thereunder~~] pursuant to that act.

21 B. The amount of the pension shall be calculated
22 using the formula for normal retirement set out in Section [~~9~~
23 ~~of the Magistrate Retirement Act]~~ 10-12C-9 NMSA 1978.

24 C. The [~~five-year~~] applicable service credit
25 requirement shall be waived if the board finds the disability

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1 to have been the natural and proximate result of causes arising
2 solely and exclusively out of and in the course of the member's
3 performance of duty as a magistrate, and the amount of pension
4 shall be computed as if the member had ~~[five]~~ the applicable
5 minimum number of years of service credit as a magistrate."

6 SECTION 8. Section 10-12C-13 NMSA 1978 (being Laws 1992,
7 Chapter 118, Section 13) is amended to read:

8 "10-12C-13. ~~[SURVIVOR'S PENSION]~~ ELECTION OF PENSION
9 PAYMENT--FORM OF PAYMENT OF PENSION.--

10 ~~[A. Unless a member has designated a survivor~~
11 ~~beneficiary in accordance with Subsection B of this section, a~~
12 ~~survivor pension shall be paid for life to a member's or~~
13 ~~retired member's surviving spouse.~~

14 ~~B. A member may designate, in writing in a form~~
15 ~~prescribed by the association, a survivor beneficiary to~~
16 ~~receive the survivor's pension described in this section. If~~
17 ~~the member is married, a designation of survivor beneficiary~~
18 ~~other than the member's spouse may only be made with the~~
19 ~~written consent of the member's spouse. Marriage subsequent to~~
20 ~~a designation of survivor beneficiary shall automatically~~
21 ~~revoke the designation of survivor beneficiary. A designation~~
22 ~~of survivor beneficiary made pursuant to a court order issued~~
23 ~~under Section 7 of the Magistrate Retirement Act shall not~~
24 ~~require the consent of the member's spouse, if any, and shall~~
25 ~~not be revoked by the subsequent remarriage of the member. A~~

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1 ~~designation of survivor beneficiary may be revoked by the~~
2 ~~member at any time prior to the member's retirement. If the~~
3 ~~member is married, a revocation of designation of survivor~~
4 ~~beneficiary may only be made with the written consent of the~~
5 ~~member's spouse.~~

6 ~~C. If there is no surviving spouse and no~~
7 ~~designated survivor beneficiary or if the surviving spouse dies~~
8 ~~while there are still minor and dependent children of the~~
9 ~~member, the survivor's pension shall be paid to all minor and~~
10 ~~dependent children, if any, of the member, in equal shares, so~~
11 ~~long as each child remains a minor or dependent child. As each~~
12 ~~child ceases to be a minor or dependent child, the number of~~
13 ~~shares shall be reduced and the amount payable to each~~
14 ~~remaining child increased proportionately so that the total~~
15 ~~survivor's pension remains unchanged as long as there is any~~
16 ~~such child.~~

17 ~~D. The survivor's pension is equal to seventy-five~~
18 ~~percent of the member's pension.~~

19 ~~E. Survivor beneficiaries shall be eligible for~~
20 ~~other benefits provided pursuant to the provisions of the~~
21 ~~Magistrate Retirement Act, including cost-of-living adjustments~~
22 ~~and continuation of group insurance benefits.~~

23 ~~F. If a member dies while receiving a disability~~
24 ~~retirement pension, the survivor beneficiary shall receive the~~
25 ~~survivor pension provided pursuant to the provisions of the~~

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1 ~~Magistrate Retirement Act.]~~ A member's pension form of payment
2 shall be determined pursuant to the provisions of Sections
3 10-11-116 and 10-11-117 NMSA 1978."

4 SECTION 9. Section 10-12C-14 NMSA 1978 (being Laws 1992,
5 Chapter 118, Section 14) is amended to read:

6 "10-12C-14. COST-OF-LIVING ADJUSTMENT.--A [~~yearly~~]
7 qualified pension recipient is eligible for a cost-of-living
8 adjustment [~~shall be made to each pension~~] payable pursuant to
9 the provisions of the Magistrate Retirement Act [~~as provided in~~
10 ~~the Public Employees Retirement Act~~] as follows:

11 A. beginning July 1, 2014 and continuing through
12 June 30, 2015, there shall not be a cost-of-living adjustment
13 applied to a pension payable pursuant to the Magistrate
14 Retirement Act; and

15 B. beginning on May 1, 2016 and no later than each
16 May 1 thereafter:

17 (1) the board shall certify to the association
18 the actuarial funded ratio of the fund as of June 30 of the
19 preceding calendar year;

20 (2) if, pursuant to Paragraph (1) of this
21 subsection, the certified funded ratio is greater than or equal
22 to eighty percent, the board shall next certify the projected
23 funded ratio of the fund on July 1 of the next succeeding
24 calendar year if, effective July 1 of the current calendar
25 year, a cost-of-living increase of two percent is applied to

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1 all payable pensions; and

2 (3) on each July 1 following the board's
3 certification of the funded ratio, the cost-of-living
4 adjustment, if any, applied to a pension payable pursuant to
5 the Magistrate Retirement Act shall be determined as follows:

6 (a) if, pursuant to Paragraph (1) of
7 this subsection, the funded ratio of the fund is greater than
8 or equal to eighty percent, and if, pursuant to Paragraph (2)
9 of this subsection, the projected funded ratio is greater than
10 or equal to eighty percent, the amount of pension payable
11 beginning July 1 of the next fiscal year shall be increased two
12 percent. The amount of the increase shall be determined by
13 multiplying the amount of the pension inclusive of all prior
14 adjustments by two percent; and

15 (b) if the funded ratio of the fund, as
16 certified pursuant to Paragraph (1) or (2) of this subsection,
17 is less than eighty percent, the amount of pension payable
18 shall not include a cost-of-living increase; provided, however,
19 that if, pursuant to the provisions of this subparagraph, the
20 cost-of-living adjustment is suspended for the two consecutive
21 fiscal years immediately prior to the most recent certification
22 by the board of the funded ratio: 1) the amount of pension
23 payable in the fiscal year immediately following the two-year
24 suspension shall be increased two percent regardless of the
25 certified funded ratio; and 2) thereafter, if, pursuant to the

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1 provisions of Paragraph (1) of this subsection, the certified
2 funded ratio is less than eighty percent, the provisions of
3 this subsection shall apply without exception in the next
4 succeeding fiscal year."

5 SECTION 10. A new Section 10-12C-14.1 NMSA 1978 is
6 enacted to read:

7 "10-12C-14.1. [NEW MATERIAL] QUALIFIED PENSION
8 RECIPIENT--COST-OF-LIVING ADJUSTMENT WAIT PERIOD--DECLINING
9 INCREASE.--

10 A. Pursuant to the Magistrate Retirement Act, a
11 qualified pension recipient is a:

12 (1) normal retired member who retires:

13 (a) on or before June 30, 2015 and has
14 been retired for at least two full calendar years from the
15 effective date of the latest retirement prior to July 1 of the
16 year in which the pension is being adjusted;

17 (b) between July 1, 2015 and June 30,
18 2016 and has been retired for at least three full calendar
19 years from the effective date of the latest retirement prior to
20 July 1 of the year in which the pension is being adjusted;

21 (c) between July 1, 2016 and June 30,
22 2017 and has been retired for at least four full calendar years
23 from the effective date of the latest retirement prior to July
24 1 of the year in which the pension is being adjusted; or

25 (d) on or after July 1, 2017 and has

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underscoring material = new
~~[bracketed material] = delete~~

1 been retired for at least seven full calendar years from the
2 effective date of the latest retirement prior to July 1 of the
3 year in which the pension is being adjusted;

4 (2) normal retired member who is at least
5 sixty-five years of age and has been retired for at least one
6 full calendar year from the effective date of the latest
7 retirement prior to July 1 of the year in which the pension is
8 being adjusted;

9 (3) disability retired member who has been
10 retired for at least one full calendar year from the effective
11 date of the latest retirement prior to July 1 of the year in
12 which the pension is being adjusted;

13 (4) survivor beneficiary who has received a
14 survivor pension for at least two full calendar years; or

15 (5) survivor beneficiary of a deceased retired
16 member who otherwise would have been retired at least two full
17 calendar years from the effective date of the latest retirement
18 prior to July 1 of the year in which the pension is being
19 adjusted.

20 B. A qualified pension recipient may decline an
21 increase in a pension by giving the association written notice
22 of the decision to decline the increase at least thirty days
23 prior to the date the increase would take effect."

24 SECTION 11. SEVERABILITY.--If any part or application of
25 this act is held invalid, the remainder or its application to

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1 other situations or persons shall not be affected.

2 SECTION 12. EFFECTIVE DATE.--The effective date of the
3 provisions of this act is July 1, 2014.

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SENATE BILL

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

FOR THE INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

AN ACT

RELATING TO PENSIONS; PROVIDING A MINIMUM RETIREMENT AGE FOR CERTAIN LEGISLATIVE MEMBERS RETIRING UNDER THE PUBLIC EMPLOYEES RETIREMENT ACT.

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

SECTION 1. Section 10-11-43.2 NMSA 1978 (being Laws 2003, Chapter 85, Section 8) is amended to read:

"10-11-43.2. STATE LEGISLATOR MEMBER COVERAGE PLAN 2--AGE AND SERVICE REQUIREMENTS FOR NORMAL RETIREMENT.--Under state legislator member coverage plan 2, the age and service requirements for normal retirement are:

A. for a member who initially became a member on or before June 30, 2009:

(1) age sixty-five years or older and five or more years of credited service; or

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[B-] (2) any age and ten or more years of credited service; or

B. for a member who initially became a member on or after July 1, 2009:

(1) age sixty-five years or older and five or more years of credited service; or

(2) age fifty-five years or older and ten or more years of credited service."

SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2014.