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

August 29, 2016
Room 322, State Capitol
Santa Fe

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

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

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

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

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

Guest Legislator
Sen. Howie C. Morales

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

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Monday, August 29

Retirement Insecurity of Private Sector Workers and State Reform Efforts

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

Overview of Private Sector Retirement Insecurity in the United States

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Private Sector Retirement Initiatives: Secure Choice or Marketplace Program

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

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

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

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

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

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

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

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

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

Questions and Discussion

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

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

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

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

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

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

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

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

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

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

Approval of Minutes

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

Policy Considerations

Additional Options for Private Sector Retirement Plans

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

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

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

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

Applicability of ERISA and Introduction to the NCPERS Secure Choice Model

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

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

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

Identifying and Accomplishing Objectives for Private Sector Retirement Security

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

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

Questions and Discussion

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

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

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

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

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

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

Economic Effects of Retirement Benefit Distributions

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

Information from the ERB

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

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

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

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

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

Information from the PERA

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

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

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

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

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

Questions and Discussion

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Questions and Discussion

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

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

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

Subcommittee

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

Adjournment

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