

NEW MEXICO EDUCATIONAL RETIREMENT BOARD

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June 24, 2016

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MINUTES OF THE
NEW MEXICO EDUCATIONAL RETIREMENT BOARD

REGULAR MEETING

June 24, 2016

1. CALL TO ORDER: QUORUM PRESENT

A Regular Meeting of the New Mexico Educational Retirement Board was called to order on this date at 9:00 a.m. in the Educational Retirement Board Room, 6201 Uptown Boulevard, N.E., Ste. 203, Albuquerque, New Mexico. A quorum was present.

Members Present:

Ms. Mary Lou Cameron, Chairwoman
Mr. H. Russell Goff, Vice Chairman
Mr. Hipolito J. Aguilar, Secretary
Dr. Donald W. Duszynski [sworn in during meeting]
Mr. Larry Magid

Members Excused:

The Hon. Tim Eichenberg, State Treasurer

Staff Present:

Ms. Jan Goodwin, Executive Director
Mr. Rick Scroggins, Deputy Director
Mr. Bob Jacksha, CIO
Mr. Roderick Ventura, General Counsel
Ms. Dianne Rossbach, CFO
Ms. Monica Lujan, Member Services Director
Ms. Leilia Nelson, Outreach Coordinator
Ms. Margaret Riquelmy, Executive Assistant

Others Present:

Mr. Allan Martin, NEPC
Mr. Phil Nelson, NEPC
Ms. Anne Hanika-Ortiz, LFC
Mr. Joseph Simon, LESC
Ms. Judith Beatty, Recorder
[See sign-in sheet.]

b. Approval of Agenda

Mr. Goff moved approval of the agenda, as published. Mr. Magid seconded the motion, which passed unanimously by voice vote.

c. Approval of Minutes – April 22, 2016

Mr. Aguilar moved approval of the April 22 minutes, as submitted. Mr. Magid seconded the motion, which passed unanimously by voice vote.

d. Approval of Minutes – May 26, 2016

Mr. Aguilar moved approval of the May 26 minutes, as submitted. Mr. Magid seconded the motion, which passed unanimously by voice vote.

e. Introduction of Guests

Chairwoman Cameron welcomed guests and staff.

2. SWEARING IN OF DR. DONALD DUSZYNSKI

Dr. Donald Duszynski, Professor Emeritus of Biology at UNM, was sworn in as AAUP representative, replacing Dr. Beulah Woodfin.

3. CONSENT AGENDA: BOARD TRAVEL

The following requests were presented:

Mary Lou Cameron: July 7, 2016, Southwest Institutional Forum
Donald Duszynski: October 2016, CAPPP program

Mr. Goff moved for approval. Mr. Magid seconded the motion, which passed unanimously by voice vote.

4. INVESTMENT REPORTS: BOB JACKSHA, CHIEF INVESTMENT OFFICER

[Presenters: Bob Jacksha and NEPC consultant Allan Martin]

Brexit comments

Mr. Jacksha and Mr. Martin reported that the effect of Brexit on the S&P 500 has not been significant at this point, but it will create volatility in the market and make it less predictable.

a. Q1 Investment Report

Mr. Martin presented the quarterly report through March 30, 2016.

-- Over the past 5 years, the fund returned 6.4 percent per annum. Over the past 3 years, the fund returned 6.0 percent per annum.

-- For the year ending 3/31/16, the fund experienced a net investment gain of \$44.8 million, which includes a net investment gain of \$124.1 million during the quarter. The fund returned 0.4 percent, outperforming the policy index by 70 basis points and ranking in the 16th percentile of its peers.

-- Although the fund has a 9.2 percent return over 30 years, that percentage is lower for the 20 years (6.9 percent) and 10 years (5.6 percent). This is because the higher return years are dropping off and the years being added are years like this year, where returns are relatively flat.

In summary, Mr. Martin commented that the NMERB's contribution rates are relatively high, with a high assumed rate of 7.75 percent, so the portfolio is designed to have lower volatility and be more resistant to down draws in the U.S. equity market. The NMERB pays for that with returns that are not as high, but it is still doing very well on a return basis. It has structured the portfolio such that the managers in the asset classes seem to be doing as anticipated.

b. Asset/Liability Study

Mr. Martin introduced Phil Nelson, head of NEPC's asset allocation group, who made a presentation.

- Current Target is a robust and well-diversified allocation that is expected to generate a return of 8.4 percent over 30 years
- Proposed Target shifts 2 percent from public to private equity, reduces private debt by 2 percent, and adds an opportunistic bucket
- 0.5x Leverage levers up Proposed Target's public markets (both equities and fixed income) by 1.5x

Mr. Martin stated that the 20 percent exposure to private debt has been an important piece of the portfolio, and those opportunities were there because of huge imbalances that were created in the global financial meltdown; however, much of that has been fixed, particularly in the U.S.

Mr. Jacksha added that the demand side has changed, too. As other plans move into risky assets, this is one area that they have also moved into, and many of the NMERB's peers are all looking at the same strategies the NMERB was looking at in 2009. He commented that there is more money and lower opportunities as a result.

Mr. Martin said NEPC has advocated a lower volatility portfolio for the NMERB because its contribution rates are relatively high and its funded status is on the lower side. Therefore, the NMERB's ability to withstand some lower market years is less than some other funds. He added that teachers

funds on average are lower in funded status because teachers do not get good support from legislators and contributions consequently are not as high.

Mr. Nelson added that, in comparing the NMERB to other plans NEPC works with, the NMERB is more in line with where a lot of peers want to be. It will take them about 10 years to get to a private market book similar in size to the NMERB's.

Board members agreed with staff's recommendation.

Mr. Jacksha said he would prepare an asset allocation schedule for inclusion in the Investment Policy for the board to take formal action on at the next meeting.

c. Investment Committee Meeting Summary

Mr. Jacksha reported on yesterday's Investment Committee meeting action:

-- Invested \$20 million on Conservation Forestry Fund IV, a timber fund that buys off large tracts of land and sells off conservation rights for easements. The NMERB has invested in Conservation Forestry before. This is a good example of a diversifying asset because it has a relatively moderate return with low risk.

d. Other Investment Reports

None.

[Break.]

5. INVESTMENT STAFF COMPENSATION

Chairwoman Cameron read the following report: "The board's compensation committee, consisting of Vice Chair Russell Goff, member Larry Magid and myself, have been discussing NMERB's Chief Investment Officer Bob Jacksha's proposal for our investment staff. The committee unanimously endorses Bob's proposal to work with the State Personnel Office and any other state agency necessary so that our investment staff members can move from being classified employees to exempt employees. This will give Bob and future CIOs the flexibility they need to hire and retain the best investment staff. I think this flexibility is especially crucial at NMERB, as our investment portfolio is more complex than those of the other investing agencies, and with the exception of the State Treasurer's Office, we are the only investing agency to manage our investments internally."

Chairwoman Cameron asked Mr. Jacksha if greater efficiencies and expertise on investment staff might result in having to hire fewer people down the road. Mr. Jacksha responded that he did not think the workload would decrease as the portfolio continued to grow. For instance, as the NMERB adds more partnerships in private assets, it will need more bandwidth as it continues to monitor and do due diligence.

Mr. Jacksha added that the NMERB would continue to look for opportunities to adopt new technologies and systems as they are developed and, where it makes sense and can result in savings, use those as possible replacements for people.

Mr. Magid pointed out that the NMERB has lost a half dozen people over the last 18 months to higher paying jobs in other agencies.

Mr. Goff moved that the NMERB direct staff to work with the State Personnel Office and any other state agency necessary to move NMERB investment staff from their current classified status to the exempt employee status at the ranges and salaries that Chief Investment Officer Bob Jacksha has discussed with the board, in order to attract and retain qualified personnel. Mr. Magid seconded the motion.

Mr. Aguilar asked staff to provide additional data that he could use in order to respond to questions.

The motion passed unanimously by voice vote.

6. FY16 BUDGET STATUS UPDATE AND FY17 BUDGET REQUEST: DIANNE ROSSBACH, CFO

Ms. Rossbach presented this report.

7. CONTINUATION OF PROPOSED CHANGES TO ERB RULE 2.82.2 AND RULE 2.82.9

- a. Recap of proposed changes introduced at April 22 meeting – Rod Ventura, General Counsel**
- b. Oral public comments**

Mr. Ventura stated that Rules 3, 4 and 5 were passed at the April 22 board meeting and will become active rules upon publication in the New Mexico Register on June 30. He said Rules 2 and 9 were tabled for more information.

- Rule 2, paragraph C. The “substitute rule” originally distinguished between short-term and long-term substitutes. Short-term substitutes (who came in on a day-to-day basis) were exempt from membership under NMERB. Long-term substitutes were members and were participating, as well. The problem was that there were day-to-day substitutes who would come in one day and then another day, etc. Eventually, they were doing more than .26 FTE and should have been considered a member under NMERB. In addition, some school districts were applying this differently.

Mr. Ventura stated that, to simplify things, the NMERB proposes eliminating the substitute rule and requiring school districts to figure out what a substitute’s FTE is from the beginning, and make adjustments as they go along.

Addressing the public comments that had been received, Mr. Ventura some school districts said it was too complicated. The Rio Rancho School District, however, identified a cost and said it would cost \$60,000 a year to implement. This was the only school district that identified a cost, and so the matter was tabled so staff could contact other school districts, as Rio Rancho’s district is relatively small. He said he contacted APS and Santa Fe Public Schools. Santa Fe Public Schools did not respond, but APS did respond and stated that they were worried that the contribution requirements would be a hardship for their low paid employees, as withholding ERB contributions from all sub salaries would cost the district an additional \$742,260, based on APS pay records. He noted that APS clarified that the figures were

derived from a report APS ran for all substitute salaries, and revealed 1148 substitutes in the APS system with wages ranging from \$11.76 to \$18,060 yearly.

Mr. Ventura noted that the letter from APS also expressed concern that there were no budget considerations made in HB2 for the increases employers would have to pay in FY17 if the rule was implemented immediately.

Responding to Mr. Goff, Mr. Ventura said he did not think he could provide a reliable estimate of what this would cost school districts statewide, on average.

Mr. Goff asked if the rule could be made effective in 2017 or 2018, and Mr. Ventura responded it could.

Mr. Aguilar asked if substitutes receive 1099 forms or W2 forms. If they receive a 1099, then they are independent contractors, even if they are considered to be “employed,” which could be for 45 days and therefore make them .26 FTE.

Mr. Aguilar also questioned how a school district can know in advance if a substitute is going to work 45 days on a 180-day contract, which would make them a .26 FTE.

Mr. Aguilar also stated that, prior to 2012, teacher absences were fairly significant but have improved dramatically over the last three years. He said this could pose another potential problem in that a school district may not know in the start of a semester whether a substitute is going to be short-term or long-term.

Mr. Ventura responded that adjustments can be made and contributions can be returned if someone is not ultimately .26 FTE. He said there are provisions for that in the NMERB rules.

Mr. Aguilar said it was his understanding that substitute teachers who sign contracts with a school district receive 1099s and not W2 forms.

Mary Jane Hogan, compliance auditor for NMERB, stated that she visits with different school districts, primarily charters. She said she is asking the same question and has learned that it varies by school district. Some schools have told her that sometimes they have a pool and hire the same people every year. Those people are determined to be contributing if they have gone beyond the .25, but most of them do not work long term (six weeks or more) and are not receiving 1099s. She said other charters contract with Kelly Services for substitutes and so don't report them in the same way.

Adam Weeks, UNM representative, said the NMERB's guiding principle should be to include substitute teachers who receive W2 forms under the rule but not those who are considered contractors and receive 1099s.

Ms. Rossbach clarified that the NMERB does not receive any information about contractors. If a school codes someone as a substitute, then they receive a W2 and the information they provide comes from their payroll register.

Mr. Aguilar said there is provision in statute that says someone who is a bus operator and owns one bus is eligible for NMERB retirement, but someone with more than one bus is a contractor. While

the IRS is clamping down on this, there are still those single bus operators who like the idea of receiving a pension. He said these lower paid people might like the idea of having some sort of “nest egg.” He stressed the importance of not introducing any ambiguity to the rule, e.g., saying that it only applies to people who get W2s. He said there needs to be predictable data for staff, the actuaries, and others.

Chairwoman Cameron expressed concern about implementing the rule in FY 2017 because school districts would not be prepared for it budget-wise.

Mr. Aguilar noted that the FY 2018 budget cycle is coming up in September. He said he was thankful that LESC and LFC representatives were present to hear the board’s discussion about a potential need for a budget adjustment to potentially accommodate school districts that would be affected by this possible rule change. Depending on the outcome of additional discussion with them and others involved in the legislative budget process, this could be an issue for FY 2019.

Ms. Goodwin stated that this rule has two different aspects; the other is the aggregation issue, which is separate from the substitute teachers part, so whether the effective date for this should be different or the same would have to be addressed.

- Rule 9, paragraphs A, B and C: The amendment would require that LAUs report all employees and not just those identified as NMERB members, which would help determine whether the LAU is reporting correctly or not. For employees with multiple LAUs, aggregating people’s employment means knowing even who the part-timers are. Through universal reporting, NMERB would be clear whether someone’s FTE status should be combined. The second part of Rule 9 clarifies late contributions and late reports and suggests a charge of \$50 per day for untimely reports.

Adam Weeks, UNM, said UNM continues to take the position that it should not be providing information for students that are completely precluded from participating in NMERB. He asked Mr. Ventura if there is a legal requirement to provide Social Security numbers for these students.

Mr. Ventura responded that he understands the concerns about confidentiality and various legal requirements and noted that NMERB has the same concerns. He said the NMERB itself is bound by certain confidentiality statutes and has all sorts of personal identification information. He said all of that is kept secure by law by rule and by the NMERB.

On the bigger issue as to why NMERB is interested in student information in the first place when they are exempt, Ms. Rossbach said NMERB wants universal reporting across the board, which gives better opportunities for compliance and comparison from school to school and employer to employer, i.e., are they all abiding by the same rules and does anything need to be clarified. She said it gives better reporting information, as well, in terms of how many people are in the system. She said the auditors also look for inconsistencies in reporting, so the hope is that NMERB can build and amend the system so it is the same across the board.

Mr. Aguilar said he was sympathetic to UNM’s concerns, but in this case the NMERB is simply verifying these exemptions.

c. Final Action

Mr. Aguilar said he felt part 2 of Rule 2 should be tabled for clarification “a W2 versus a 1099...and what employment really means.”

Mr. Aguilar moved to table Rule 2.82.2. Mr. Goff seconded the motion, which passed unanimously by voice vote.

Mr. Aguilar moved to adopt staff recommendations on Rule 2.82.9. Mr. Goff seconded the motion, which passed unanimously by voice vote.

Mr. Aguilar also recommended that he and Ms. Goodwin meet with the budgeters on the idea of putting this forward for consideration by the Executive. He said he would visit with Secretary Rodriguez and Director Abbey as the budget is being developed for FY 2018. He stated that he would recommend that this rule go into effect in FY 2018, which would give time to work with the legislature in moving this forward.

8. BOARD TRANSPARENCY POLICY/ADOPTION: ROD VENTURA, GENERAL COUNSEL

Mr. Ventura stated that the sunshine laws that apply to NMERB include the Open Meetings Act, Inspection of Public Records Act and the requirement for disclosure of third-party marketers. This policy is intended to be applied in addition to these statutory requirements in order to promote full transparency of NMERB actions, including its investment activity.

Mr. Goff moved for approval of the policy. Mr. Magid seconded the motion, which passed unanimously by voice vote. [Mr. Aguilar was not present for the vote.]

9. AGE & SERVICE RETIREMENTS: MONICA LUJAN, MEMBER SERVICES DIRECTOR

Ms. Lujan presented the April and May retirement summary, reporting a total of 789 retirements during that period.

Mr. Goff moved for approval. Mr. Magid seconded the motion, which passed unanimously by voice vote.

10. DISABILITY RETIREMENTS: RICK SCROGGINS, DEPUTY DIRECTOR

Mr. Scroggins reviewed new claims, periodic reviews, and applications for disability COLAs.

Mr. Aguilar moved to approve the disability benefits report. Mr. Magid seconded the motion, which passed unanimously by voice vote.

11. DIRECTOR’S REPORT: JAN GOODWIN, EXECUTIVE DIRECTOR

a. Update 2016 Retirement Season

Ms. Goodwin reported that July 1 retirements are at 1,089, which is 85 fewer than last year’s 1,174. In 2014, there were 1,231 retirements.

b. NMRHCA Update

Ms. Goodwin reported that the NMRHCA Board is having its retreat in July, when it will change some of the pre-Medicare benefits going forward, including eliminating the Premier Plus plan and moving everyone into the Premier plan. Most of those people will see a reduction in their premium.

c. Other

None.

12. EXECUTIVE SESSION: 12:40 P.M.

- a. **Limited personnel matters [session closed pursuant to NMSA 1978, Section 10-15-1(H)(2)]**

- b. **Pending Litigation: CBL & Associates Properties, Inc. (session closed pursuant to NMSA 1978, Section 10-15-1(H)(7))**

Chairwoman Cameron moved that the board go into executive session for the purpose of discussing limited personnel matters, as permitted by the Open Meetings Act, Section 10-15-1(H)(2), and for the purpose of discussing pending litigation regarding CBL & Associates Properties, in accordance with Section 10-15-1(H)(7). Mr. Magid seconded the motion, which passed on the following roll call vote:

For: Chairwoman Cameron; Mr. Goff; Mr. Aguilar; Dr. Duszynski, Mr. Magid.

Against: none.

13. ACTION FROM EXECUTIVE SESSION: 1:40 P.M.

Chairwoman Cameron moved that the board come out of executive session. The only matters discussed during executive session were limited personnel matters as permitted by the Open Meetings Act, Section 10-15-1(H)(2), and to discuss pending litigation in accordance with Section 10-15-1(H)(7). Mr. Magid seconded the motion, which passed unanimously by voice vote. [Mr. Aguilar was not present for the vote.]

Mr. Goff moved that the NMERB file a motion with the applicable court to be appointed Lead Plaintiff in the securities class action litigation currently filed in Federal Court, involving CBL & Associates Properties, Inc. Mr. Magid seconded the motion, which passed unanimously by voice vote. [Mr. Aguilar was not present for the vote.]

Chairwoman Cameron said the board discussed a limited personnel matter, which was the salary of the Executive Director. She read a letter that the board would be sending to the Office of the Governor, noting that the board discussed this at the last meeting, but the Office of the Governor requested more detail:

The New Mexico Educational Retirement Board, at its meeting today, June 24, 2016, voted to change Executive Director Jan Goodwin's salary range from a Governor exempt employee range 42 to a Governor exempt range 60. The salary range change is to reflect a salary increase plan to \$240,000.00 the board approved for her at its June 24, 2016 board meeting, and this will be in equal increments over three years.

In addition, the New Mexico Educational Retirement Board at its June 24, 2016, meeting today voted to change Deputy Director Rick Scroggins's salary range from a Governor exempt employee range 32 to a Governor exempt employee range 48. This salary range is to reflect a salary increase to \$179,000.00 in equal increments over the next three years.

Chairwoman Cameron moved for approval. Mr. Magid seconded the motion, which passed unanimously by voice vote. [Mr. Aguilar was not present for the vote.]

Mr. Goff said Mr. Aguilar could not be present for this portion of the meeting, and has asked that the record reflect that he was unable to support this at this time.

14. NEXT MEETING: FRIDAY, AUGUST 26, 2016 – ALBUQUERQUE

14. ADJOURN

Its business completed, the Educational Retirement Board adjourned the meeting at 1:45 p.m.

Russell Goff, Vice Chairman

ATTEST:

Hipolito J. Aguilar, Secretary