

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

**November 29, 2016
Room 322, State Capitol
Santa Fe**

The fifth meeting of the Investments and Pensions Oversight Committee was called to order by Senator George K. Munoz, chair, on November 29, 2016 at 9:37 a.m. in Room 322 of the State Capitol.

Present

Sen. George K. Munoz, Chair
Rep. Monica Youngblood, Vice Chair
Sen. Pete Campos
Rep. Miguel P. Garcia
Rep. Larry A. Larrañaga
Sen. Bill B. O'Neill
Rep. Jane E. Powdrell-Culbert
Rep. Jim R. Trujillo
Rep. Luciano "Lucky" Varela
Sen. James P. White

Absent

Sen. Jacob R. Candelaria
Sen. Carroll H. Leavell
Sen. Steven P. Neville
Rep. William "Bill" R. Rehm

Advisory Members

Sen. Ted Barela
Rep. Roberto "Bobby" J. Gonzales
Rep. Tomás E. Salazar
Rep. Sheryl Williams Stapleton

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

Guest Legislator

Sen. John Arthur Smith

Staff

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

Minutes Approval

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

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Tuesday, November 29

Request for Endorsement of Legislation — Municipal Post-Employment Benefit Trust

Tom Horan, Esq., presented the recent draft of a bill that had been presented to and endorsed by the committee in the past (see Senate Bill 168 (2016)). This bill would provide a way for the City of Albuquerque to continue providing post-employment life insurance benefits for its employees and to report the provision of benefits in a way that complies with the Governmental Accounting Standards Board (GASB) statement governing the reporting of unfunded accrued pension liability.

Questions and Discussion

On questioning, the committee and Mr. Horan addressed the following topic.

Effect of legislation if enacted; program details. Mr. Horan clarified that the legislation, if enacted, would: 1) allow, not require, municipalities to adopt the program; 2) give municipalities discretion on many program features, including whether the benefit offered is a term- or full-life policy and whether to pay employee shares; and 3) allow municipalities to establish higher rates of return on investments and, thus, set aside less money to meet their liabilities under GASB rules. Mr. Horan also clarified that money from investment returns is reinvested in the program and not commingled with money in a municipality's general fund.

Approval of Minutes

The minutes from the August meeting were adopted without objection.

Request for Endorsement of Legislation from the Educational Retirement Board (ERB)

Jan Goodwin, executive director, ERB, Bob Jacksha, chief investment officer (CIO), ERB, and Roderick Ventura, general counsel, ERB, presented two bills proposed for endorsement.

Technical Clean-Up Bill Proposal

Ms. Goodwin stated that the first bill is intended to update archaic terminology in ERB-related statutes and align those statutes with business practices; the changes, she said, are categorized as: 1) provisional membership; 2) disability benefits; and 3) clarifying and technical.

Action on proposal. With no objection, the committee endorsed the bill.

Classification of Staff and Executive Management Bill Proposal

Ms. Goodwin explained that the second bill would allow the ERB director, subject to board approval, to develop salary classifications and ranges for the ERB's investment staff. The measure, she added, would: 1) address a 2010 recommendation by Ennis Knupp for the ERB to seek salary-setting autonomy for that staff; 2) help the ERB attract and retain qualified investment staff; 3) improve ERB accountability; and 4) apply provisions affecting other state agencies to the ERB. Ms. Goodwin further argued in favor of the measure as follows: 1) current investment staff salaries are relatively low; 2) the ERB is in danger of losing members of that staff because opportunities for higher-paying, similar jobs are available to them; and 3) if the ERB lost members of its investment staff, the agency would have difficulty replacing them.

Questions and Discussion

On questioning, the committee and ERB staff discussed the following topics in relation to the bill concerning classification of staff and executive management.

Current status; arguments for and against measure; consequences of enacting the measure. A member pointed out that money for the salaries comes from the ERB trust fund, not from the General Fund.

Ms. Goodwin explained that, at present: 1) all positions except that of CIO are classified and are under the State Personnel Office (SPO) classification system; 2) that system provides salary ranges by classification; and 3) about six months ago, ERB staff discussed the salary range issue with SPO staff, who indicated that increasing those ranges was not a priority of the agency. She also explained that the ERB is acting on the 2010 Ennis Knupp recommendation now because the ERB portfolio and salary ranges and the economy have changed since then, and two key positions are now vacant.

A member pointed out that the measure would appropriate some of the governor's power to the ERB and asked whether the ERB had discussed the measure with the Governor's Office. Ms. Goodwin said that the ERB had engaged in such preliminary discussions. She said that the office seemed amenable to the idea and expressed a wish to study the issue further but refrained from committing to signing the bill.

The presenters made arguments in favor of the measure. Ms. Goodwin noted that increasing salaries as proposed would improve the ERB's contributions to the larger state economy. Mr. Jacksha pointed out a risk in not undertaking the measure: the ERB could lose its qualified investment staff and suffer a loss in its future investment-return potential. Mr. Jacksha cited figures illustrating that ERB investment staff salaries are significantly below market rates. Ms. Goodwin commented that, unlike other investing agencies, ERB investment staff actively manage some assets; that practice, she said, saves the agency substantial amounts of money. Mr. Jacksha elaborated that the Public Employees Retirement Association (PERA) has the same ranges and classifications for its investment staff, but those of the State Investment Council (SIC) investment staff differ somewhat: some are governor exempt, and others are classified.

A member expressed, as follows, concerns about enacting the legislation: 1) it would allow one investing agency to operate differently from the others; 2) the ERB's position that it lacks the resources to recruit and maintain qualified investment staff seems to contradict the agency's reports of its high investment performance under the current system; 3) other types of public employees, like teachers and police, deserve higher salaries but have to go without them; and 4) the PERA is not likewise asking for leniency in salary scheduling.

Ms. Goodwin clarified that, under the measure, the ERB would: 1) create salary ranges similar to those of its peers; 2) determine a given employee's salary based on the employee's qualifications and experience; and 3) institute the salary changes over a three-fiscal-year period. Responding to a member's question about whether the ERB would, under the measure, be involved in establishing the salary ranges, Mr. Ventura said that such a provision is already in statute. The member indicated a preference that a requirement for board review and approval of those ranges be included in the bill. Ms. Goodwin assured the committee that the ERB would work on making clear in the bill that salary- and classification-setting are subject to board approval.

A member commented that the agency should have pursued the measure sooner and at a time when it would be easier to adopt. Another member acknowledged the state's current financial difficulty but stressed that maintaining highly qualified investment staff is integral to achieving robust returns and worth the associated costs.

ERB investment practices. Responding to member questions, Mr. Jacksha and Ms. Goodwin explained several aspects of the ERB's investment practices. Mr. Jacksha said that the ERB selects brokers, who execute transactions, through a competitive process; in return, those brokers receive either commissions (for stocks) or payments (for bonds). The ERB also pays fees to outside managers for investment advice and pays for research services, he said. Ms. Goodwin noted that the quarterly investment report made to the board, which is available on the ERB website, contains information on ERB transactions and brokers. Mr. Jacksha further explained that: 1) concerning foreign investments, in 2005, the ERB moved from selecting them from a list of lawful investments to making those decisions using prudent investor rules as guidance; 2) the ERB changes its asset allocation every two years with board consent; 3) to guard against the potential for sweeping losses like those from the formerly widely held mortgage-backed securities, the ERB employs an approach involving oversight and broad diversification and reduced volatility of its overall portfolio; and 4) the ERB follows criteria, which vary by trade type, for choosing brokerage houses to access the market.

ERB vacancies. Ms. Goodwin reported that one seat on the seven-person ERB — a governor-appointed seat — has been vacant since July 1, 2015. A member called the vacancy unsettling, considering the size of the fund (over \$11 billion), the duration of the vacancy and an audit finding of board deficiency in the area of financial expertise. Ms. Goodwin noted that a requirement for eight hours of board training in investment and fiduciary responsibility had been instituted following that finding.

Action on Proposal

With objection from two members, the committee endorsed the bill. One of the two objecting members explained the member's objection as stemming from a preference that the SPO first study the issue. Ms. Goodwin responded by saying that, though the ERB has presented the SPO with evidence of the pay disparities in this context, the SPO has indicated that changing such investment staff salary ranges is not among its priorities.

Request for Endorsement of Legislation from the State Treasurer's Office (STO)

Tim Eichenberg, state treasurer, presented a bill proposed for endorsement that would require the ERB, PERA, SIC and STO to submit to the state auditor with the agencies' annual audits certain additional financial information. He outlined several of the bill's provisions and explained that the measure would reveal more information about how the affected agencies are using state money. State Treasurer Eichenberg also indicated that the ERB is agreeable to the measure and that the PERA, having reviewed the bill, is generally in agreement with it but has suggested some technical changes.

State Treasurer Eichenberg echoed remarks by Ms. Goodwin concerning the difficulty of recruiting and retaining qualified employees, given budget constraints and Personnel Act limitations. He then introduced two STO employees who accompanied him, Charmaine Cook, state cash manager, and Samuel K. Collins, Jr., deputy treasurer.

Questions and Discussion

On questioning, the committee and STO staff addressed the following topics.

Issue affecting the Office of Superintendent of Insurance (OSI). Responding to a member's comments on the recently publicized issue of non-collection of insurance taxes, State Treasurer Eichenberg clarified that the bill would not affect the OSI but, rather, the four investing agencies.

ERB and PERA reaction to bill proposal. Ms. Goodwin stated that the ERB could relatively easily produce the supplemental information that would be required of the ERB under the proposed law. The ERB already produces that information for its audited financial statements and its comprehensive annual financial reports. She expressed support for the measure as a way to promote transparency. Wayne Propst, executive director, PERA, who was in the audience, also endorsed the measure and remarked that the PERA, too, could feasibly produce the supplemental information.

Clarification of bill; reason for measure. State Treasurer Eichenberg argued that the bill was warranted, even though the agencies it would affect appear to be largely complying with its provisions and even though the requirements could instead be promulgated by rule by the state auditor. He commented that, although those agency heads are already directing the more robust reporting, without the measure, their successors would not necessarily continue the practice.

Member reactions to bill proposal. A member expressed general support for the bill and commented on the related needs for: 1) more disclosure, particularly in the context of the SIC, by staff on their relationships to key people and institutions, which might reveal potential conflicts of interest; and 2) more time-specific requirements for reporting to legislative interim committees. State Treasurer Eichenberg highlighted the difficulty of ensuring through law that staff abide by ethical principles.

Status of state's cash balances; payment of warrants. Ms. Cook indicated that the state is spending more than it is receiving in revenue and that the state's cash reserves will continue to deplete unless that trend reverses. Two members exchanged their impressions of the current balances of the state's reserve accounts. Mr. Collins cited some related figures. The members stressed the needs for a solvency plan, for more certainty in revenue generation and for the governor to change her position on raising revenue through tax increases. The members also expressed concern for State Treasurer Eichenberg, who, under the circumstances, is exposed to the risk of penalty if he pays a warrant when insufficient funds are available.

Action on Proposal

With no objection, the committee endorsed the bill.

Request for Endorsement of Legislation from the PERA

Karyn Lujan, PERA Smart Save plan manager, PERA, and Greg Trujillo, deputy executive director, PERA, presented two bills proposed for endorsement. Ms. Lujan reminded the committee that the Smart Save plan is a defined contribution plan, which means that it is participant-directed and, as such, places no liability on the PERA, the plan sponsor. She added that, as of October 2016, the plan had 19,800 participants and \$510 million in assets under management. She then reviewed the first bill as follows.

The bill would amend the Deferred Compensation Act, which was enacted in 1981, to allow for electronic transactions related to enrollment and account management. This provision would bring the program up to date with current practices, increase participation in the plan and enhance retirement savings. The bill would also make technical changes to some sections of the act. The PERA board endorsed the legislation.

Mr. Trujillo described the second bill as changing the way payments are made for participants participating in the state retirement systems under reciprocity agreements between those systems' administrators. Specifically, the legislation would provide that each benefits-providing agency pay its portion of the benefit owed separately from the other.

Questions and Discussion

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

Proposal to separate benefit-paying source. Mr. Trujillo clarified that: 1) under present law, the ERB or PERA exchange information on benefits, and one of the two agencies pays the

full benefit amount; 2) if the legislation were enacted, a payee would receive two deposits and two 1099 forms, and about 2,500 retirees would be affected; 3) currently, a participant of the ERB and the PERA must provide information upon retirement to one of the two agencies, which then gets shared between them; and 4) if the legislation were enacted, the new law would redress some of the challenge the agencies experience in calculating cost-of-living adjustments and would relieve both agencies of having to correct a mistake made by the other.

ERB proposal to give the ERB discretion on investment staff salaries and classifications. Responding to a member's questions, Jon Grabel, CIO, PERA, who was in the audience, remarked that: 1) the ERB's, PERA's and SIC's portfolios are similar in that they are broadly diversified; and 2) the PERA bases its decision of which assets to manage internally and which to manage externally on a measure of efficiency. Mr. Propst, also in response to members' questions, testified that: 1) the salaries of six PERA employees, including the CIO, are not set by the SPO; 2) depending on the outcome of the proposal to exempt ERB employees from the Personnel Act, the PERA might pursue a similar course, given that the measure would allow for greater compensation of investment staff; 3) the PERA has not discussed the issue with the governor or her staff; and 4) the PERA portfolio is as complex as those of the ERB and SIC. Responding to a member's questions, Mr. Grabel testified that: 1) the PERA's investment staff positions are filled; 2) the PERA is planning to expand that staff by one position; 3) the work of some PERA investment staff persons is substantially similar to that of comparable PERA staff; and 4) several investment staff members at the PERA worked in that capacity at the ERB and vice versa.

State financial solvency and credit rating. A member brought up the issue of the state's financial solvency being in jeopardy and suggested that a mechanism be created whereby money in the permanent funds be tapped to avoid fiscal deficiencies and downgrades in the state's credit ratings.

Action on Proposals

With no objection, the committee endorsed both bills.

Adjournment

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