

This is an amendment to 20.80.200 NMAC, Sections 30, 60, 70 and 80, effective February 13, 2024.

2.80.200.30 VACANCY ON THE BOARD:

A. In the event any member of the PERA board retires from his or her job, resigns from the board, is removed from the board or dies, except the ex-officio members of the board, that member shall be considered to have resigned from the board and the board shall, by resolution, declare that office vacant as of the date of the adoption of such resolution. Such resolution shall be adopted within 30 days after the board member's retirement, resignation, removal or death. Members of the retirement board shall serve until their successors have qualified.

B. In the event any member of the PERA board, except the ex-officio members of the board, ceases employment with an affiliated public employer, and is not reemployed by an affiliated public employer from the same membership (state, county or non-county municipal) group from which that member was elected within 30 days, that member shall be considered to have resigned from the board. For purposes of 2.80.200.30 NMAC, the term "ceases employment" shall include leave without pay status that extends for more than 12 weeks.

C. The resolution declaring the vacancy shall be publicized immediately in conjunction with a notice inviting eligible individuals to apply for appointment to the position within 30 days of the publication of notice of vacancy. Publication shall be, at the minimum, by special notice to employees in the affected membership group through their employers. The board shall select the new member from among the interested persons who apply pursuant to the publication of the notice of vacancy. If no applications are received, the board shall entertain nominations by the members present.

D. Any vacancy of member, except ex-officio member, occurring on the board shall be filled by a quorum of the remaining board members, [~~even though a quorum not be present,~~] at a regularly scheduled board meeting or special board meeting within 90 days after the adoption of the resolution declaring the vacancy. The member selected to fill the vacancy shall be selected from the membership group, whether state, county or non-county municipal or retired member, which experienced the vacancy. If a vacancy in the municipal membership group is that of a county member, the replacement member shall be a county employee. The selected member must meet all eligibility requirements of elected members and shall be appointed to serve for the remainder of the vacated term.

[2.80.200.30 NMAC - Rp, 2.80.200.30 NMAC, 12/30/2015; A, 02/13/2024]

2.80.200.60 ELECTION OF RETIRED BOARD MEMBERS:

A. During the January monthly meeting, the retirement board shall adopt a resolution specifying when nominating petitions are due to be returned to PERA or an independent contractor hired by PERA to assist with the election. These nominating petitions are due not earlier than six months prior and not later than one month prior to the election for the position of retired board member. The resolution shall also specify whether the method of voting shall include mailed paper ballots, online electronic ballots or other method approved by the board.

B. [~~Any~~] Except as provided in Subsection F of this section, only a retired member who is receiving a disability or normal retirement pension under the Public Employees Retirement Act, Judicial Retirement Act or the Magistrate Retirement Act [~~is~~] shall be eligible for election to a retired board member position.

C. Nominating petitions shall be signed only by retired members under the Public Employees Retirement Act, Judicial Retirement Act or the Magistrate Retirement Act. To be eligible for inclusion on the ballot, a candidate must have a minimum of 50 valid nominations by retired members and the candidate shall otherwise be eligible as provided in this section for the retired board member position. A valid nomination shall include a signature, legible printing of the retiree's name, and one of the following:

- (1) the last four digits of the retiree's social security number;
- (2) the retiree's date of birth;
- (3) the retiree's PERA identification number. A nomination that does not include at least one of these elements [~~may~~] shall not be counted. For purposes of this subsection, "signature" shall include an electronic signature, in any digital format, from a single identifiable e-mail address. A retired member may sign more than one nominating petition for different candidates. The five eligible candidates with the highest number of valid nominations shall be included on the ballot and the other or others shall be eliminated. The names of the five retired members receiving the highest number of valid nominations shall be placed on the election ballot in descending order according to the number of valid signatures received. In case of a nominating tie, the election committee may recommend to the board a method to determine the names and order and the board shall determine

the names and order in which ~~they~~ the eligible candidates subject to the nominating tie are placed on the ballot by lottery or similar method.

D. In the event any nominee is unable or unwilling to accept a nomination or is otherwise ineligible for the position, that nominee's name shall be removed from the ballot and the resulting vacancy on the ballot shall not be filled. If ~~[the inability or unwillingness]~~ a nominee who is unable or unwilling to accept a nomination [occurs after the ballots have been printed] or a nominee who is ineligible for election is included on the ballots, the election committee and board shall treat all votes cast for that nominee as void.

E. If only one eligible retiree is nominated for a retired board member position, the election shall be cancelled and that retiree shall automatically be declared the winner for the retired board member position pursuant to 2.80.200.80 NMAC.

F. ~~[Only retired members under the Public Employees Retirement Act, Judicial Retirement Act or the Magistrate Retirement Act shall be eligible to participate in the election of retired board members.]~~ Notwithstanding the provisions of Subsection B of this section, a candidate shall be ineligible for election to a retired board member position if the candidate previously served on the board, representing any membership group, and during that previous tenure the candidate was:

- (1) subject to three or more separate board resolutions of reprimand and censure; or
- (2) removed from the board.

G. The campaign contribution limit of \$25.00 contained in Subsection B of Section 10-11-130.1 NMSA 1978 (2000) shall apply to each four year term retired board member election.
[2.80.200.60 NMAC - Rp, 2.80.200.60 NMAC, 12/30/2015; A, 3/14/2017; A, 12/28/2021; A, 02/13/2024]

2.80.200.70 ELECTION OF NON-RETIRED BOARD MEMBERS:

A. During the January monthly meeting, the retirement board shall adopt a resolution specifying when nominating petitions are due to be returned to PERA or an independent contractor hired by PERA to assist with the election. These nominating petitions are due not earlier than six months prior and not later than one month prior to the election for the position of non-retired board member. The resolution shall also specify whether the method of voting shall include mailed paper ballots, online electronic ballots or other method approved by the board.

(1) [Candidates nominated for any non-retired board member position shall be] Except as provided in Paragraph (2) of this subsection, only non-retired, vested members under the Public Employees Retirement Act, Judicial Retirement Act or the Magistrate Retirement Act shall be eligible for election to a non-retired board member position. [(2)] Only state members, including members under the Judicial Retirement Act or the Magistrate Retirement Act, may nominate state member candidates for state board member positions. Only county members may nominate county member candidates for the county board member position. Only non-county municipal members may nominate non-county municipal member candidates for the [remaining] non-county municipal board member positions.

(2) Notwithstanding the provisions of Paragraph (1) of this subsection, a candidate shall be ineligible for election to a non-retired board member position if the candidate previously served on the board, representing any membership group, and during that previous tenure the candidate was:

- (a) subject to three or more separate board resolutions of reprimand and censure; or
- (b) removed from the board.

(3) To be eligible for inclusion on the ballot, a candidate must [have] provide nominating petitions to PERA with a minimum of 150 valid nominations of non-retired PERA members from the candidate's membership group [on his or her nominating petition] and the candidate shall otherwise be eligible as provided in this section for that board member position. A valid nomination shall include a signature, a legible printing of the member's name, the member's current employer and one of the following:

- (a) the last four digits of the member's social security number;
- (b) the member's date of birth; or
- (c) the member's PERA identification number.

A nomination that does not include at least one of these elements ~~may~~ shall not be counted. For purposes of this subsection, "signature" shall include an electronic signature, in any digital format, from a single identifiable e-mail address. A member may sign more than one nominating petition for different candidates.

(4) The five eligible candidates with the highest number of valid nominations for each non-retired position shall be included on the ballot and the other or others shall be eliminated. The names of the five non-retired members receiving the highest number of valid nominations for a position shall be placed on the election ballot in descending order according to the number of valid signatures received. In case of a nominating tie, the election committee may recommend to the board a method to determine the names and order and the board shall

determine the names and order in which ~~they~~ the eligible candidates subject to the nominating tie are placed on the ballot by lottery or similar method.

(5) In the event any nominee is unable or unwilling to accept the nomination, ~~his or her~~ or is otherwise ineligible for the position, that nominee's name shall be removed from the ballot and the vacancy on the ballot shall not be filled. If ~~such a vacancy occurs after the ballots have been printed~~ a nominee who is unable or unwilling to accept a nomination or a nominee who is ineligible for election is included on the ballots, the election committee and board shall treat all votes cast for that candidate as void.

(6) If only one eligible member is nominated for a non-retired board member position, the election shall be cancelled and that member shall automatically be declared the winner for the non-retired board member position pursuant to 2.80.200.80 NMAC.

(7) All members of record of the membership group for which the election is held shall be eligible to receive a ballot as provided in ~~[Subparagraph (a) of Paragraph (8) below, except that only county members shall vote in elections for the county member position, and shall not be eligible to vote in elections for non-county municipal positions]~~ Paragraphs (8) and (9) of this subsection and members shall only be eligible to vote in those elections in which they are eligible to receive a ballot. The applicable membership group for any member who is no longer a currently employed, contributing employee of an affiliated public employer shall be determined as of the last date on which the member was a currently employed, contributing employee of an affiliated public employer.

(8) For purposes of the election of non-retired board members, "member of record" shall mean the following:

(a) all persons listed in PERA electronic membership history records as members, including members covered under the Public Employees Retirement Act, Judicial Retirement Act or the Magistrate Retirement Act, no more than 60 days prior to the date of mailing ballots;

(b) all persons who have filed with PERA a valid application for membership form 60 days or more prior to the date of mailing ballots;

(c) while members of record shall qualify to receive a ballot, in the case of those new members listed in Subparagraph (b) of Paragraph (8) of Subsection A of 2.80.200.70 NMAC, a written request for a ballot must be made to PERA.

(9) For purposes of the election of non-retired board members:

(a) ballots shall be mailed to all non-county municipal members of record in the case of an election of a non-county municipal board position;

(b) ballots shall be mailed to all county municipal members of record in the case of an election of the county municipal board position; and

(c) ballots shall be mailed to all state members of record in the case of an election of a state board position.

B. The campaign contribution limit of \$25.00 contained in Subsection B of Section 10-11-130.1 NMSA 1978 (2000) shall apply to each four-year term non-retired board member election. [2.80.200.70 NMAC - Rp, 2.80.200.70 NMAC, 12/30/2015; A, 3/14/2017; A, 12/28/2021; A, 02/13/2024]

2.80.200.80 ELECTIONS: The call of the annual meeting and secret election ballots shall be mailed at least 30 days prior to the annual meeting of the association. Mailed ballots shall be returned to a designated United States post office locked box and picked up by the election committee or an independent contractor hired by PERA to assist with the election. To be counted, ballots must be returned to the designated United States post office locked box by 12:00 noon on the date set by the association. The call of the annual meeting and secret election ballots may also be made available at least 30 days prior to the annual meeting of the association online via a secure website maintained by an independent contractor hired by PERA to assist with the election or by another method specified in the resolution adopted by the board each January. To be counted, online ballots or votes cast by another approved method must be received by 12:00 noon on the date set by the association. An independent contractor hired by PERA to assist with the election shall assign unique identifiers to members to prevent voting more than one ballot per eligible member.

A. Each ballot shall contain an affirmation of the member's eligibility to vote.

B. Ballots shall be self-proving and shall be counted by the election committee or an independent contractor hired by PERA to assist with the election. The candidate receiving the greatest number of votes shall be declared the winner for each position. In the event of a tie, the election committee may recommend to the board a method to name the winner and the board shall select by lottery or similar method the name of the winner. The

election committee or an independent contractor hired by PERA to assist with the election shall report the results of the election to the membership at the annual meeting.

C. Members whose ballots have not been delivered to them may request and receive another ballot if the original ballot is returned by the United States post office undelivered to PERA or an independent contractor hired by PERA to assist with the election prior to the close of the election. Members whose ballots have been mutilated or spoiled may request and receive another ballot when, prior to the close of the election, the original mailed ballot is returned by the member to PERA or an independent contractor hired by PERA to assist with the election. In addition, PERA or an independent contractor hired by PERA to assist with the election may assign unique identifiers to members and issue replacement ballots using procedures to prevent voting more than one ballot per eligible member.

D. If the election committee or an independent contractor hired by PERA to assist with the election recommends for good cause that the results of the election be invalidated, and the board adopts such recommendation, a new election shall be held as soon as possible thereafter and the annual meeting at which the election results are announced shall be continued until completion of the new election.

E. Insignificant departures from the requirements set forth in these regulations pertaining to the conduct of elections shall not invalidate the election unless the results of the election are proven to have been substantially affected.

F. A member shall be considered to be “qualified” for office pursuant to Subsection D of Section 10-11-130 NMSA 1978 when the board has accepted the election results and the newly-elected member has been sworn into office.

[2.80.200.80 NMAC - Rp, 2.80.200.80 NMAC, 12/30/2015; A, 3/14/2017; A, 02/13/2024]