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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/5/09  
 SPONSOR Neville LAST UPDATED 3/2/09 HB \_\_\_\_\_  
 SHORT TITLE Additional Investment Council Appointees SB 460/aSPAC/aSFC  
 ANALYST White

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

|              | FY09 | FY10   | FY11   | 3 Year<br>Total Cost | Recurring<br>or Non-Rec | Fund<br>Affected   |
|--------------|------|--------|--------|----------------------|-------------------------|--------------------|
| <b>Total</b> |      | \$ 0.1 | \$ 0.1 | \$ 0.1               | Recurring               | Permanent<br>Funds |

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

State Investment Council (SIC)

Higher Education Department (HED)

### SUMMARY

#### Synopsis of SFC Amendment

The Senate Finance Committee Amendment to Senate Bill 460 strikes language inserted by the SPAC amendment which would specifically require public members of the State Investment Council (SIC) to have “no less than ten years experience in the field of investment or finance.” The amendment also addresses the concern that higher education institutions, which benefit from annual Land Grant Permanent Fund (LGPF) distributions, would not longer have SIC representation. Language is inserted to include “the Chief Financial Officer of a state institution of higher education appointed by the governor with the advice and consent of the Senate.” This decreases the amount of public members to be appointed by the rest of the SIC members from four to three.

#### Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment to Senate Bill 460 clarifies that new public members appointed to the State Investment Council (SIC) must have “no less than ten years experience in the field of investment or finance.” The bill as originally drafted required members to have experience but did not provide a specific threshold.

The amendment also strikes language requiring that members “not be engaged in any capacity in the sale of securities to the state” while serving as an SIC member, and inserts language

requiring them to have no business with SIC, the State Treasurer's Office (STO), the Educational Retirement Board (ERB), The Public Employees Retirement Association (PERA), the New Mexico Finance Authority (NMFA), or the State Board of Finance (BOF) for two years prior and two years following their SIC service.

### Synopsis of Original Bill

Senate Bill 460 changes the make-up of the State Investment Council by increasing the number of members from 9 to 13 while simultaneously decreasing the number of Governor's appointees who serve on the council. The bill would accomplish this by:

- removing a public member currently required to be a chief financial officer of a state university to be replaced by a legislative appointee (described below) by June 30, 2009,
- allowing the President Pro Tempore of the Senate, the Minority Floor Leader of the Senate, the Speaker of the House of Representatives, and the Minority Floor Leader of the House of Representatives to each appoint a public member to the council,
- and adding 4 additional public members elected by the majority of the other 9 SIC members with the advice and consent of the Senate.

The incoming public members' term length would also differ from current statute in order to properly stagger council membership. One new member would serve for a period of one year, two new members for three years, and one new member for five years. After the initial terms have been served term lengths would return to the current statutory level of five years. Due to the membership changes, Senate Bill 460 would also change SIC quorum requirements. Currently 5 of 9 members are required to establish a quorum with at least 3 of the 4 public members being in attendance. If this legislation were enacted, a quorum would require at least 7 of the total 13 members including 5 of the 8 public members.

Senate Bill 460 would also change statutory language in order to require council members to act in accordance with the "Governmental Conduct Act" instead of the "Conflict of Interest Act" as currently required. However, current SIC procedures governing members' conduct and potential conflict of interests could be interpreted as more demanding than either statute.

### **FISCAL IMPLICATIONS**

This legislation would create a minor impact on the SIC operating budget related to additional printing and administrative costs, as well as additional per diem payments to the increased amount of public members. These additional costs are expected to be minimal.

### **SIGNIFICANT ISSUES**

The State Investment Council (SIC) is a non-cabinet level agency that reports directly to the Governor, who chairs the council and appoints the State Investment Officer. SIC has been in existence since 1958 and is charged with administering the state's permanent funds. The two largest permanent funds, the Land Grant (LGPF) and Severance Tax (STPF) Permanent Funds, consisted of more than \$11 billion in assets as of December 31, 2008. The council currently consists of:

- Governor Bill Richardson, Chairman
- State Investment Officer Gary Bland
- State Treasurer James Lewis
- Commissioner of Public Lands Pat Lyons
- DFA Secretary Katherine Miller
- Public Member David Harris (Representing a State University)
- Public Member Andrew Davis
- Public Member Tom Bonafair
- Public Member Stephen Feinberg

Both SIC and the Higher Education Department have voiced concern about the removal of a public member who currently serves as chief investment officer at a state university. State universities can be greatly affected by the actions of the SIC. SIC reports that “New Mexico Universities are considerable stakeholders in the LGPF, with the University of New Mexico, New Mexico State, New Mexico Tech, Eastern New Mexico, Western New Mexico, New Mexico Highlands, and the Northern NM Community College all receiving annual LGPF distributions as constitutionally defined beneficiaries of the LGPF.” The SIC also currently invests approximately \$75 million for the College Affordability Endowment Fund on behalf of the Higher Education Department.

**The SPAC amendment to Senate Bill 460 creates possible problems in recruiting the most qualified individuals to serve as SIC public members. The majority of individuals who would qualify to serve as public members already do a great deal of business with one or more of the state entities listed in the amendment. Therefore, adoption of this requirement could significantly reduce the pool of qualified candidates. The amendment also strikes language requiring members to have no business with SIC during their tenure on the council. This concern had already been addressed in the legislation by requiring that members adhere to the Governmental Conduct Act.**

## **ALTERNATIVES**

Senate Bill 460 states that appointed SIC members must be “qualified by competence and experience in the field of investment or finance,” but does not list any specific requirements to meet these qualifications. Language could be inserted into the bill requiring specific qualifications such as time served in the fields of investment or finance, in order to ensure that the appointed public members are fully qualified to serve on the SIC. Legislation with similar language has been introduced in the past, most recently in 2008 as Senate Bill 150.

**The SPAC amendment inserts language requiring appointees to have “no less than ten years of experience in the field of investment or finance.” The new language more than adequately addresses this concern.**

Language could also be inserted into this legislation to ensure that one of the appointed public members represent New Mexico higher education institutions, particularly those colleges and universities directly receiving annual distributions from the LGPF. Given the substantial effect decisions made by the SIC could have upon these institutions it would seem prudent that they are in some way represented on the council.

**The SFC amendment inserts language requiring that one member of the council be the CFO of “a state institution of higher education appoint by the governor with the advice and consent of the Senate.**

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

This SIC composition would remain as currently described in statute.

DMW/svb:mt