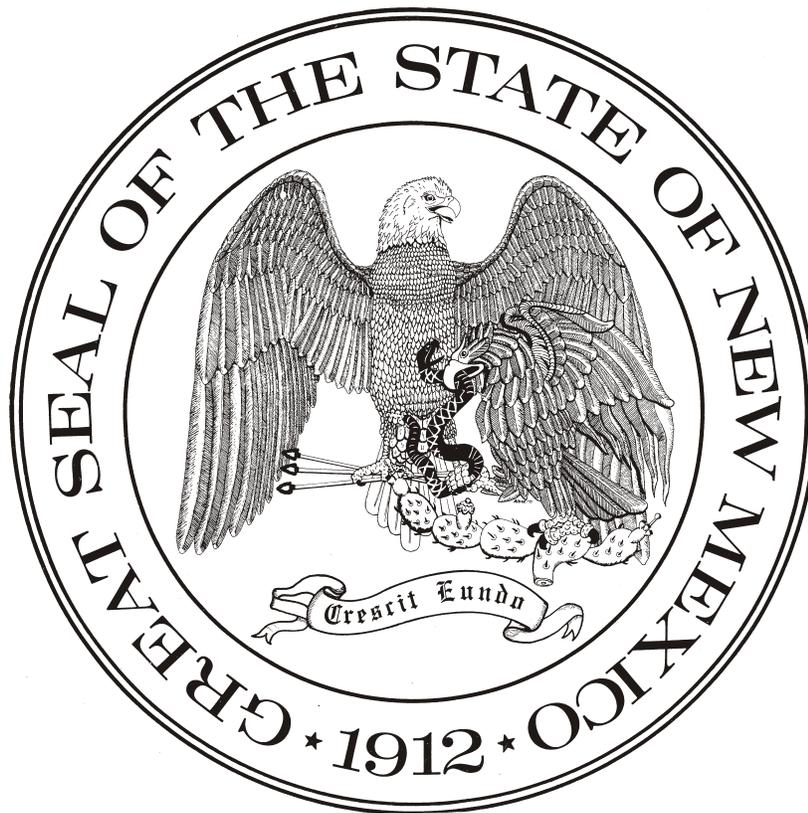


**INVESTMENTS OVERSIGHT COMMITTEE**

**2010 INTERIM**

**FINAL REPORT**



**New Mexico Legislative Council Service  
Santa Fe, New Mexico  
January, 2011**

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**COMMITTEE MEMBERSHIP, WORK PLAN AND  
MEETING SCHEDULE**

**2010 APPROVED  
WORK PLAN AND MEETING SCHEDULE  
for the  
INVESTMENTS OVERSIGHT COMMITTEE**

The Investments Oversight Committee (IOC) was created by the New Mexico Legislative Council on May 12, 2010. Committee members are as follows:

**Members**

Rep. John A. Heaton, Chair  
Sen. George K. Munoz, Vice Chair  
Rep. Donald E. Bratton  
Sen. Tim Eichenberg  
Sen. Timothy M. Keller  
Rep. Larry A. Larrañaga

Sen. Carroll H. Leavell  
Sen. Steven P. Neville  
Rep. Henry Kiki Saavedra  
Sen. John M. Sapien  
Rep. Jim R. Trujillo  
Rep. Luciano "Lucky" Varela

**Advisory Members**

Rep. Andrew J. Barreras  
Sen. Carlos R. Cisneros  
Rep. Miguel P. Garcia  
Rep. Roberto "Bobby" J. Gonzales  
Sen. Stuart Ingle  
Rep. Patricia A. Lundstrom  
Sen. Mary Kay Papen  
Sen. William H. Payne

Rep. Jane E. Powdrell-Culbert  
Sen. John C. Ryan  
Sen. Michael S. Sanchez  
Sen. John Arthur Smith  
Rep. Sheryl Williams Stapleton  
Rep. Shirley A. Tyler  
Rep. Richard D. Vigil  
Sen. Peter Wirth

**Work Plan**

During the 2010 interim, the IOC will:

1. receive reports from the State Investment Council (SIC), the Educational Retirement Board (ERB) and Public Employees Retirement Association (PERA) on their disagreement, agreement and/or implementation of the findings of the fiduciary review by Ennis Knupp and Associates regarding investment fund governance, process and policies, board composition, expertise and independence, staff expertise, overall investment policy setting, the selection of individual investments, the selection and compensation of advisors, portfolio valuation, etc.;
2. receive reports from the investment funds, the Office of the Attorney General and others regarding the progress of current litigation and of potential claims by the state and the funds regarding "pay-to-play" allegations, investment fraud, etc.;
3. examine the performance of the investment portfolios of the SIC, the PERA and the ERB and funds in the state treasury in absolute terms and compared to policy benchmarks and comparable funds. This would include the returns on the entire portfolio as well as the return on individual segments, including stocks, bonds, real estate and private equity;
4. review the manner in which investment policy and associated earning benchmarks

were set for the investment funds by the governing bodies and investigate how each agency determines the proportional mix of types of investments, including mutual stock and bond funds, individual stocks and bonds, real estate, private equity, etc. The IOC will also review how investment policies for the retirement funds change in response to changes in projections regarding program solvency and unfunded liabilities;

5. pursuant to the charge of the Government Restructuring Task Force, receive testimony on the potential costs and benefits of merging the investment functions of the SIC, the PERA, the ERB, the Office of the State Treasurer and the New Mexico Finance Authority into a single entity in order to improve returns and reduce administrative costs through "economies of scale" and the ability to hire and retain the most qualified investment staff and/or consultants at less cost; and

6. review the solvency plans for the PERA, the ERB and the Retiree Health Care Authority (RHCA), which plans are to be produced and submitted to the IOC by the Retirement Systems Solvency Task Force (RSSTF) as mandated by HB 573, 2009 Regular Session, and propose IOC-sponsored legislative reforms based on the task force's deliberations and reports to the committee. The IOC will also take testimony from the PERA, the ERB and the RHCA and industry experts in advance of receipt of the RSSTF report to enable their policy deliberations to be better informed.

**Investments Oversight Committee  
2010 Approved Meeting Schedule**

<b><u>Date</u></b>	<b><u>Location</u></b>
June 14, 2010*	Santa Fe
July 2, 2010	Santa Fe
August 16, 2010	Santa Fe
October 8, 2010	Santa Fe

**REPORT OF THE INVESTMENTS OVERSIGHT  
COMMITTEE: SUMMARY**

## **REPORT OF THE INVESTMENTS OVERSIGHT COMMITTEE: SUMMARY**

### **Introduction**

The Investments Oversight Committee (IOC) was created by the New Mexico Legislative Council as the successor to the Investments and Pensions Oversight Committee (IPOC). The IOC focused during this interim on the investment functions of the State Investment Council (SIC), the Public Employees Retirement Association (PERA) board and the Educational Retirement Board (ERB), as well as receiving the recommendations of the Retirement Systems Solvency Task Force (RSSTF), which was created by statute (Laws 2009, Chapter 288, Section 19) to evaluate the solvency of the ERB and PERA pension funds and make recommendations to the IOC, which would in turn propose legislation to the 2011 session of the New Mexico Legislature. The oversight by the legislature of investments and pensions began in 2003, with the creation of the State Permanent Fund Task Force by Senate Joint Memorial 14, and continued pursuant to Senate Joint Memorial 13 of the 2005 session. House Bill 212 of the 2006 session would have created a committee much like the IPOC; however, the bill was pocket-vetoed by Governor Richardson. Since 2006, the New Mexico Legislative Council has created the IPOC and its successors.

### **Summary of Committee Activity**

The IOC meetings during the 2010 interim addressed a number of issues related to the funds invested by the SIC, the PERA and the ERB. The committee not only examined the investment performance of each fund but also considered fund governance, policymaking and procurement processes for investment managers and consultants.

The IOC took testimony at its July meeting from the SIC, the ERB and PERA on recent reforms in board governance, investment policy and investment operations management enacted in response to new legislation, the Ennis Knupp fiduciary reviews of the agencies commissioned by the New Mexico Legislative Council and the State Board of Finance or other agency.

At its August meeting, the IOC received reports from the SIC, ERB and PERA on the amount of funds lost as a result of investment fraud or other illegal activities or amounts paid to third-party marketers and current and proposed litigation efforts to recover such funds. The IOC also heard a panel discussion involving the three investment agencies on the potential for increased investment earnings and/or cost savings from combining, refining or restructuring the agencies' investment functions.

The New Mexico attorney general also gave testimony at the August meeting on statewide options, strategies and efforts to recover funds lost due to investment fraud or other illegal activities.

At its December 1, 2010 meeting, the IOC heard reports from the PERA and ERB on their respective recent investment performance, outlook for pension fund solvency and policy initiatives and legislative proposals dealing with investments or fund solvency. The SIC reported on its recent investment performance and proposed legislation affecting investment fund governance, investment policy and agency operations.

The IOC also heard at this meeting the recommendations of the RSSTF regarding proposed legislation.

Finally, the IOC heard a panel discussion on a recommendation by the Attorney General's Office to include investment advisory services under the Procurement Code.

The IOC voted at the December 1 meeting to endorse the following legislative proposals:

- A bill to provide that the state's contribution rates into the Educational Retirement Fund would be increased gradually beginning July 1, 2011. The increased contribution rates would start at 11.4% in FY 2012 and incrementally increase yearly, resulting in a rate of 13.9% beginning in FY 2017 and continuing thereafter. (.183068.2)
- A bill to remove the governor as a member of the SIC and require the chair of the SIC to be elected by the members. (.182843.2)
- A bill to allow the state investment officer and the state treasurer to appoint designees, to reduce the governor's appointments, with the consent of the senate, from six to three and to add three members appointed by the New Mexico Legislative Council. (.182846.1)
- A bill to expand the duties of the Private Equities Investment Advisory Committee to include reviewing and making recommendations to the council on economically targeted investments. (.183394.1)
- A bill to amend the New Mexico Uniform Securities Act to allow for enforcement by the attorney general and to increase the statute of limitations. The bill would also amend the definition of "fraud" to mirror the State of New York's "Martin Act". (.182842.1SA)
- A bill to allow the SIC to enter into contingent fee legal services contracts in pursuit of investment recoveries rather than on a fee-for-service basis, as is now the case. (.183454.1SA)
- A bill to remove the statutory requirement that the state investment officer serve on the New Mexico Finance Authority, the New Mexico Renewable Energy Transmission Authority and the education trust boards. (.182964.1SA)
- A bill to remove the current statutory language that requires the Tobacco Settlement Permanent Fund (TSPF) to be invested "as the Land Grant Permanent Funds" (LGPF) because it is not appropriate for the TSPF to be invested in long-term horizon investments like private equity, real estate and other alternatives, especially because the tobacco fund is a reserve fund for the legislature. (.182967.1SA)
- A bill to amend legislation dealing with the TSPF to remove the requirement that it be invested in the same manner as the LGPF. (.183103.1SA)
- A resolution to authorize a constitutional amendment to increase to 25% the constitutional cap of 15% on international equity investments by the SIC for the LGPF. (.182968.1SA)

An additional meeting of the IOC was approved by the New Mexico Legislative Council for December 21, 2010. At this meeting, the IOC heard the final legislative proposals of the ERB and PERA to enhance the solvency of their pension funds and a legislative proposal by the SIC to improve the investment process and agency operations.

The IOC also heard legislative proposals from committee members and other legislators to enhance ERB and PERA pension fund solvency.

The IOC voted at the December 21, 2010 meeting to endorse the following legislative proposals:

- A proposal to increase ERB employee contribution rates from the current rate by .125% per year for four years to 8.4% of salary for those employees making \$20,000 or less per year and to 9.9% of salary for those making greater than \$20,000 per year and increase the employer contribution rates an average of .5% per year for six years to 15.4% of salary for those employees making \$20,000 or less per year and 13.9% of salary for those employees making greater than \$20,000 per year. (No bill draft)
- A bill to enhance solvency of the PERA pension fund by increasing various contribution rates to the pension fund. The bill would increase the employee contribution rates an average of .67% per year for four years to 10.09% of salary for those employees making \$20,000 or less per year and .295% per year for four years to 10.09% of salary for those making greater than \$20,000 per year and increase the employer contribution rates an average of 1.33% per year for four years to 21.92% of salary for those employees making \$20,000 or less per year and an average of 1.7% per year to 21.92% of salary for those employees making greater than \$20,000 per year. Further, the bill would provide for the municipal police member coverage plan 1 to increase the employee contribution rates an average of .67% per year for four years to 9.67% of salary and increase the employer contribution rates an average of 1.33% per year for four years to 15.33% of salary. The bill would provide for municipal police member coverage plan 2 to increase the employee contribution rates an average of .67% per year for four years to 9.67% of salary and increase the employer contribution rates an average of 1.33% per year for four years to 20.33% of salary. It would provide for the municipal police member coverage plan 3 to increase the employee contribution rates an average of .67% per year for four years to 9.67% of salary and increase the employer contribution rates an average of 1.33% per year for four years to 23.83% of salary. Further, the bill would provide for the municipal police member coverage plan 4 to increase the employee contribution rates an average of .67% per year for four years to 15.02% of salary and increase the employer contribution rates an average of 1.33% per year for four years to 23.83% of salary. Further, it would provide for the municipal police member coverage plan 5 to increase the employee contribution rates an average of .67% per year for four years to 18.97% of salary and increase the employer contribution rates an average of 1.33% per year for four years to 23.83% of salary. Further, it would provide for the municipal fire member coverage plan 1 to increase the employee contribution rates an average of .67% per year for four years to 10.67% of salary and increase the employer contribution rates an average of 1.33% per year for four years to 16.33% of salary. Further, it would provide for the municipal fire member coverage plan 2 to increase the employee contribution rates an average of .67% per year for four years to 10.67% of salary and increase the employer contribution rates an average of 1.33% per year for four years to 22.83% of salary. Further, it would provide for the municipal fire member coverage plan 3 to increase the employee contribution rates an average of .67% per year for four years to 10.67% of salary and increase the employer contribution rates an

average of 1.33% per year for four years to 26.58% of salary. Further, it would provide for the municipal fire member coverage plan 4 to increase the employee contribution rates an average of .67% per year for four years to 15.47% of salary and increase the employer contribution rates an average of 1.33% per year for four years to 26.58% of salary.

Further, it would provide for the municipal fire member coverage plan 5 to increase the employee contribution rates an average of .67% per year for four years to 18.87% of salary and increase the employer contribution rates an average of 1.33% per year for four years to 26.58% of salary. (.183673.1)

- A proposal was made to amend the Judicial Retirement Act to increase the employee contribution rates an average of .67% per year for four years to 10.17% of salary for those employees making \$20,000 or less per year and .295% per year for four years to 10.17% of salary for those employees making greater than \$20,000 per year and increase the employer contribution rates an average of 1.33% per year for four years to 17.33% of salary for those employees making \$20,000 or less per year and an average of 1.7% per year to 17.33% of salary for those employees making greater than \$20,000 per year. Further, there was a proposal to amend the Magistrate Retirement Act to increase the employee contribution rates an average of .67% per year for four years to 10.17% of salary for those employees making \$20,000 or less per year and .295% per year for four years to 10.17% of salary for those making greater than \$20,000 per year and increase the employer contribution rates an average of 1.33% per year for four years to 16.33% of salary for those employees making \$20,000 or less per year and an average of 1.7% per year to 16.33% of salary for those employees making greater than \$20,000 per year. (.183713.1SA)
- A bill to authorize the Public Employees Retirement Board to select a custodian bank, rather than have the selection performed by the State Board of Finance as is now the case, and to hire attorneys on a contingent fee basis rather than on a fee-for-service basis, as is now the requirement. (.183674.1SA)
- A bill to amend the powers and duties of the SIC, provide for the election of the chair and vice chair of the council, authorize the SIC to contract for legal services on a contingent fee basis and make other technical amendments to SIC statutes. (.182963.5SA)
- A bill to amend the Public Employees Retirement Act to reduce cost-of-living adjustments applied annually to retiree pension payments. (.183377.1)
- A bill to amend the Public Employees Retirement Act to require municipal employees to make the employee portion of the contribution to their retirement plan. (.183378.1)

**AGENDAS AND MINUTES OF MEETINGS**

Revised: June 1, 2010

**TENTATIVE AGENDA  
for the  
FIRST MEETING  
of the  
INVESTMENTS OVERSIGHT COMMITTEE**

**June 14, 2010  
Room 307, State Capitol  
Santa Fe**

**Monday, June 14**

- 9:00 a.m.     **Call to Order**  
—Representative John A. Heaton, Chair  
—Senator George K. Munoz, Vice Chair
- 9:05 a.m.     **Recent Investment Performance: State Investment Council (SIC)**  
—Steve Moise, State Investment Officer, SIC
- 9:45 a.m.     **Recent Investment Performance: Public Employees Retirement Association  
(PERA)**  
—Terry Slattery, Executive Director, PERA  
—Joelle Mevi, Chief Investment Officer, PERA
- 10:30 a.m.    **Recent Investment Performance: Educational Retirement Board (ERB)**  
—Jan Goodwin, Executive Director, ERB  
—Bob Jacksha, Chief Investment Officer, ERB
- 11:15 a.m.    **Review of State Investment-Related Legislation, 2010 Session**  
—Doris Faust, Staff Attorney, Legislative Council Service (LCS)  
—Tom Pollard, Ph.D., Staff, Investments Oversight Committee, LCS
- 11:45 a.m.    **Government Restructuring Task Force Presentation**  
—Raúl Burciaga, Director-Designate, LCS
- 12:00 noon    **Adoption of Interim Work Plan**  
—Tom Pollard, Ph.D., Staff, Investments Oversight Committee, LCS
- 12:45 p.m.    **Adjourn**

Revised: June 29, 2010

**TENTATIVE AGENDA  
for the  
SECOND MEETING  
of the  
INVESTMENTS OVERSIGHT COMMITTEE**

**July 2, 2010  
Room 307, State Capitol  
Santa Fe**

**Friday, July 2**

- 9:00 a.m.     **Call to Order**  
—Representative John A. Heaton, Chair  
—Senator George K. Munoz, Vice Chair
- 9:05 a.m.     **State Investment Council (SIC). Recent Reforms in Board Governance, Investment Policy and Investment Operations Management: New Legislation, the EnnisKnupp Fiduciary Review and Other Agency Initiatives**  
—Steve Moise, State Investment Officer, SIC
- 10:30 a.m.    **SIC. Overview of the SIC's Economically Targeted Investment Program: Specific Program Components and Investment and Economic Returns for Individual Projects**  
—Steve Moise, State Investment Officer, SIC  
—Greg Kulka, Director of Private Equity and Economically Targeted Investments, SIC
- 12:00 noon    **Lunch**
- 1:30 p.m.     **Educational Retirement Board (ERB). Recent Reforms in Board Governance, Investment Policy and Investment Operations Management: New Legislation, the EnnisKnupp Fiduciary Review and Other Agency Initiatives**  
—Jan Goodwin, Executive Director, ERB  
—Bob Jacksha, Chief Investment Officer, ERB
- 3:00 p.m.     **Public Employees Retirement Association (PERA). Recent Reforms in Board Governance, Investment Policy and Investment Operations Management: New Legislation, the EnnisKnupp Fiduciary Review and Other Agency Initiatives**  
—Terry Slattery, Executive Director, PERA
- 4:30 p.m.     **Adjourn**

**TENTATIVE AGENDA  
for the  
AUGUST MEETING  
of the  
INVESTMENTS OVERSIGHT COMMITTEE**

**August 16, 2010  
Room 307, State Capitol  
Santa Fe**

**Monday, August 16**

- 9:00 a.m.     **Call to Order**  
—Representative John A. Heaton, Chair  
—Senator George K. Munoz, Vice Chair
- 9:05 a.m.     **New Mexico Attorney General. Statewide Options, Strategies and Efforts to Recover Funds Lost Due to Investment Fraud or Other Illegal Activities**  
—Gary King, New Mexico Attorney General
- 10:30 a.m.    **State Investment Council (SIC). Current and Proposed Litigation Efforts and Other Strategies to Recover SIC Funds Lost as a Result of Investment Fraud, Other Illegal Activities or Paid to Third-Party Marketers**  
—Steve Moise, State Investment Officer, SIC
- 12:00 noon    **Lunch**
- 1:30 p.m.     **Educational Retirement Board (ERB) and Public Employees Retirement Association (PERA). Current and Proposed Litigation Efforts and Other Strategies to Recover Funds Lost as a Result of Investment Fraud, Other Illegal Activities or Paid to Third-Party Marketers**  
—Jan Goodwin, Executive Director, ERB  
—Terry Slattery, Executive Director, PERA
- 3:00 p.m.     **PERA, SIC and ERB. Panel Discussion Regarding Potential for Increased Investment Earnings and/or Cost Savings from Refining or Restructuring the Agencies' Investment Functions**  
—Terry Slattery, Executive Director, PERA  
—Steve Moise, State Investment Officer, SIC  
—Jan Goodwin, Executive Director, ERB
- 4:30 p.m.     **Adjourn**

Revised: November 30, 2010

**TENTATIVE AGENDA  
for the  
DECEMBER 1 MEETING  
of the  
INVESTMENTS OVERSIGHT COMMITTEE**

**December 1, 2010  
Room 307, State Capitol  
Santa Fe**

**Wednesday, December 1**

- 9:00 a.m.     **Call to Order**  
—Representative John A. Heaton, Chair  
—Senator George K. Munoz, Vice Chair
- 9:05 a.m.     **Educational Retirement Board (ERB). Recent Investment Performance, Outlook for ERB Retirement Fund Solvency and Legislative Proposals**  
—Jan Goodwin, Executive Director, ERB  
—Bob Jacksha, Chief Investment Officer, ERB
- 10:00 a.m.    **Public Employees Retirement Association (PERA). Recent Investment Performance, Outlook for PERA Retirement Fund Solvency and Legislative Proposals**  
—Terry Slattery, Executive Director, PERA  
—Joelle B. Mevi, Chief Investment Officer, PERA
- 11:00 a.m.    **Retirement Systems Solvency Task Force (RSSTF). Recommendations to the Investments Oversight Committee (IOC) Regarding Proposed Legislation**  
—Raúl E. Burciaga, Director, Legislative Council Service (LCS), Staff to the RSSTF  
—Doris Faust, Assistant Director for Drafting Services, LCS, Staff to the RSSTF
- 12:00 noon    **Lunch**
- 1:15 p.m.     **Committee Business**  
—Approval of Minutes
- 1:30 p.m.     **Legislation Proposed by the New Mexico Attorney General. Proposed Legislation to Include Investment Advisory Services Under the Procurement Code**  
—Phillip Baca, Assistant Attorney General  
—Bob Jacksha, Chief Investment Officer, ERB  
—Joelle B. Mevi, Chief Investment Officer, PERA  
—Vince Smith, Deputy State Investment Officer, State Investment Council (SIC)

- 2:15 p.m.     **Legislation Proposed by the New Mexico State Treasurer**  
—Orlando Romero, State Cash Manager, State Treasurer's Office (STO)  
—Sheila Duffy, Chief Investment Officer, STO  
—Yasmin Dennig, General Counsel, STO
- 3:00 p.m.     **State Investment Council. Recent Investment Performance and Legislation Proposed by the SIC**  
—Steve Moise, State Investment Officer, SIC  
—Vince Smith, Deputy State Investment Officer, SIC
- 3:45 p.m.     **Other Retirement Fund Solvency Legislation Proposed for IOC Endorsement**  
—Representative John A. Heaton
- 4:15 p.m.     **Other Investment-Related Legislation Proposed for IOC Endorsement**  
—Senator Timothy M. Keller
- 5:00 p.m.     **Adjourn**

Revised: December 17, 2010

**TENTATIVE AGENDA  
for the  
DECEMBER 21, 2010 MEETING  
of the  
INVESTMENTS OVERSIGHT COMMITTEE**

**December 21, 2010  
Room 322, State Capitol  
Santa Fe**

**Tuesday, December 21**

9:00 a.m. **Call to Order**

—Representative John A. Heaton, Chair  
—Senator George K. Munoz, Vice Chair

9:05 a.m. **Educational Retirement Board (ERB): ERB Retirement Plan Revision  
Proposal and Implications for Retirement Fund Solvency**

—Jan Goodwin, Executive Director, ERB

10:00 a.m. **Public Employees Retirement Association (PERA): PERA Proposed  
Legislation and Implications for Retirement Fund Solvency**

—Terry Slattery, Executive Director, PERA

10:45 a.m. **State Investment Council (SIC): SIC Proposed Legislation**

—Steve Moise, State Investment Officer, SIC

11:15 a.m. **Other Legislation Proposed for Investments Oversight Committee (IOC)  
Endorsement**

—Representative John A. Heaton, Chair  
—Representative Mimi Stewart

12:30 p.m. **Adjourn**

**MINUTES  
of the  
FIRST MEETING  
of the  
INVESTMENTS OVERSIGHT COMMITTEE**

**June 14, 2010  
State Capitol  
Santa Fe**

The first meeting of the Investments Oversight Committee for the 2010 interim was called to order by Representative John A. Heaton, chair, on Monday, June 14, 2010, at 9:10 a.m. at the State Capitol in Santa Fe.

**Present**

Rep. John A. Heaton, Chair  
Sen. George K. Munoz, Vice Chair  
Sen. Timothy M. Keller  
Sen. Carroll H. Leavell  
Sen. John M. Sapient  
Rep. Jim R. Trujillo

**Absent**

Rep. Donald E. Bratton  
Sen. Tim Eichenberg  
Rep. Larry A. Larrañaga  
Sen. Steven P. Neville  
Rep. Henry Kiki Saavedra  
Rep. Luciano "Lucky" Varela

**Advisory Members**

Sen. Carlos R. Cisneros  
Rep. Roberto "Bobby" J. Gonzales  
Rep. Patricia A. Lundstrom  
Sen. Mary Kay Papen  
Sen. William H. Payne  
Rep. Jane E. Powdrell-Culbert  
Rep. Sheryl Williams Stapleton  
Rep. Shirley A. Tyler

Rep. Andrew J. Barreras  
Rep. Miguel P. Garcia  
Sen. Stuart Ingle  
Sen. John C. Ryan  
Sen. Michael S. Sanchez  
Sen. John Arthur Smith  
Rep. Richard D. Vigil  
Sen. Peter Wirth

**Staff**

Tom Pollard, Legislative Council Service (LCS)  
Doris Faust, LCS  
Claudia Armijo, LCS

**Guests**

The guest list is located in the meeting file.

**Handouts**

Handouts and written testimony are in the meeting file.

**Monday, June 14**

**Welcome**

Representative Heaton welcomed the members and guests and gave a brief recap of what transpired at the last committee meeting in the 2009 interim. After a brief discussion on the topic of the legal fees for investment agency board members and staff, the chair asked the LCS staff to provide information about the statutory obligation regarding the requirements for the legal fees to be paid for Educational Retirement Board (ERB) and the Public Employees Retirement Association (PERA) employees.

**Recent Investment Performance: State Investment Council (SIC)**

Steve Moise, the interim state investment officer (SIO) for the SIC, addressed the committee. Mr. Moise provided a brief background outlining his previous professional experience, including years as a commercial transactions lawyer in Denver and Albuquerque. He added that after a brief retirement, he had been involved in the reorganization of the University of Colorado, serving on the university's foundation. Mr. Moise has most recently served on the State Board of Finance at the request of the governor. He resigned that post to take his position as interim SIO as of April 1, 2010. Mr. Moise expressed a long-running interest in state investment policy and noted that he looks forward to serving the state in his new position.

Mr. Moise advised the members that there have been critical changes at the SIC. He indicated that its mission is to ensure inter-generational equity in the management of the state's permanent funds. He said that recent changes to the SIC's governing statutes have been helpful, citing that the makeup of the council is much more balanced and its decision-making role is strengthened. Mr. Moise noted that the SIC has some recommendations for additional statutory changes for the upcoming legislative session; in particular, the SIC is interested in amending the 15 percent limitation placed on it for international investments.

Mr. Moise next told the members that the SIC has new committees that have been appointed and are now under the responsibility of the council, not the SIO. He added that the State Personnel Office has performed a review of the SIC office. Additionally, he noted that the SIC has adopted a new asset allocation model, formed an investment committee at the council level chaired by Doug Brown and has formed other working committees at the council level as well.

Lastly, Mr. Moise explained that the SIC currently has a request for proposals (RFP) out for bid and is seeking a search firm to locate a deputy for investments. He noted that the SIC is evaluating its current managers and consultants and has RFPs out for new managers and new asset classes. He anticipates that RFPs will be issued for new consultants as well.

The chair began a discussion by noting that the state depends heavily on the yields from the funds and that the 10-year numbers from the funds are not promising. Kay Chippeaux, senior portfolio manager for the SIC, told the members that one of the things that has contributed to the SIC funds' underperformance has been the statutory limitation on international investments at 15 percent. She added that another reason has been the poor performance of the U.S. large-cap stocks. There was a general discussion regarding the funds' performance and whether better

results can be expected. Mr. Moise added that it is hoped that the statutory changes could help with the ability of the SIC to get better performance from the funds.

Some of the members inquired about internal restructuring and changes within the SIC and how those changes might transpire. Mr. Moise relayed that the SIC is extremely focused on the execution of those changes. He said it is making needed changes without taking on unnecessary risk.

Ms. Chippeaux and Mr. Moise explained that the SIC is now, and will be in the future, faced with some new start-up investment costs because new investments are being acquired. They explained that adjustments must be made for the timing of investing at the height of the market. Mr. Moise also told the members that in the past, the SIC had a 25 basis point limit it would pay outside fund managers. He said the council has determined it to be in the state's interest to remove that restriction and pay reasonable fees associated with getting the best possible fund managers. Some members questioned whether there was a need for a cap on the basis points. Mr. Moise responded that there is no cap at this time. However, he emphasized that industry standards will apply.

Members of the committee requested a list of fund managers and how much they are being paid as well as information regarding what industry standards for payment are. Ms. Chippeaux advised the committee that the standards vary depending on the asset class.

Ms. Chippeaux reviewed the asset allocation information contained in the performance report handed out to the members. She went over the breakdown of the fund and reviewed fund performance versus benchmarks, including projections 10 years out. Some members questioned the validity of select benchmarks used for certain funds. Additionally, some members questioned whether getting returns that are no better than those the state could get from investing in corporate bonds can justify the need for asset managers and the SIC in general. Mr. Moise assured the members that the SIC is looking at the state's investment strategies from all angles, including asset management, positive versus active management, internal versus external management, indexing and every other means available to determine the best use of the money and the best way to ensure growth.

The members requested a list of the advisors and consultants and the fees they are charging the SIC as well as their respective performance histories. Additionally, the members asked for an outline of the new SIC structure and information relating to how the SIC is now in compliance with SB 18. Mr. Moise said that he and the SIC staff would be happy to supply the information, and he added that they would also provide an update of the recommendations they had presented to the State Board of Finance.

There was a discussion about job creation and venture capital interests in New Mexico as well as dialogue concerning the film industry's impact on the local economies. It was noted that the chart used by the Government Restructuring Task Force (GRTF) might be beneficial for use by the committee.

**Recent Investment Performance: PERA**

Terry Slattery, executive director for the PERA, and Joelle Mevi, the PERA's chief investment officer, presented to the committee the PERA funds' performance. Mr. Slattery told the members that in the last quarter of 2009, the PERA saw an increase of retirements driving monthly payment totals up to \$55 million. He added that as of July 1, 2010, JP Morgan Chase will serve as New Mexico's custody bank.

Mr. Slattery noted that the PERA has invested in three new hedge funds since the beginning of 2010. He added that the PERA is feeling the impact of the downturn in the global economy and that the fund had a negative 5.5 percent return for May 2010. He noted that small caps outperformed large caps. He advised the members that at the end of May 2010, the PERA was close to meeting all of its target allocations and decreased its exposure to equities.

While referring to the PERA handout outlining the fund allocations, members asked Mr. Slattery if, in future presentations, the fees could be listed next to each fund. Much of the general discussion was driven by the topic of fund solvency. The members questioned Mr. Slattery about the long-term solvency of the fund. He replied that the PERA pays out about \$600 million a year to retirees while taking in about \$500 million a year. Consequently, there is a negative \$100 million each year. Ms. Mevi discussed the PERA's intentions to reduce international investments and increase domestic investments. She explained the due diligence necessary prior to the board's approval for asset investments.

When asked how the PERA funds compare with similar funds throughout the country, Ms. Mevi replied that the PERA has been in the ninth percentile over the last year, ranking quite well compared to similar funds. She advised the members that 100 percent of the PERA's assets are externally managed and that most of the PERA's 2009 fees paid to fund managers were based on performance, noting that many of the asset managers have exceeded their required basis points. Members asked to see fund management fees as a percentage of fund totals in future presentations.

**Recent Investment Performance: ERB**

Bob Jacksha, chief investment officer for the ERB, started by telling the members about the ERB's investment results for the past 12 months. He noted that the fund experienced a gross investment gain of \$2.5 billion, which includes a gross investment gain of \$310.9 million during the first quarter. Additionally, the fund's total assets increased from \$8.3 billion at the beginning of the quarter to \$8.6 billion on March 31, 2010, with \$35.7 million in net distributions.

Mr. Jacksha continued by telling the members that over the past five years, the fund returned 5.3 percent per annum, outperforming its policy index by 0.7 percent, ranking in the eleventh percentile of public funds greater than \$1 billion.

Mr. Jacksha told the committee that for the year ending March 31, 2010, the fund returned 40.4 percent, outperforming its policy index by 8.0 percent and ranking in the ninth percentile of public funds greater than \$1 billion. He added that for the current quarter, the fund posted a 3.7 percent return, outperforming its policy index of 0.6 percent and ranking in the twenty-eighth

percentile of public funds greater than \$1 billion. He noted that all of the fund's asset classes were within their respective policy ranges as of March 31, 2010.

There was continuing discussion about the eight percent fund growth target used by the ERB and whether it is a realistic amount and how it is reviewed and determined for validity. Jan Goodwin, ERB executive director, told the members that the eight percent is reviewed on a regular basis and has been determined to be the best number for its specific purposes. It will be reviewed again. It is not set in stone, but it continues to withstand much scrutiny when evaluated for its usefulness. It was noted that the Legislative Finance Committee (LFC) has focused on the eight percent and reported on the implications of changing that number. Members may find the LFC information helpful. Ms. Goodwin urged the members not to make any changes to contribution rates for employees at this time. She noted that new employees will be entering the system with higher contribution rates, and she said that any additional changes to the contribution rates should require a deliberative process, not quick actions.

Ms. Goodwin talked briefly about long-term asset allocation and the process involved with minimizing the risk. Mr. Jacksha notified the members that the ERB had made a strategic long-term decision to place more investments in emerging markets. He noted also that over the past three years, the ERB has had a plan in place to reduce its reliance on public equities so as also to reduce some of the volatility associated with those investments. Ms. Goodwin noted that there are benefits to a pension fund for investment purposes; specifically, because the fund operates in perpetuity, it provides a situation for investments that an individual could not prudently choose to invest in, like certain private equities and hedge funds. She also talked about the ERB's actuary and how all assumptions and aspects of the fund will be reviewed and looked at in detail for a long period of time. She noted that New Mexico's ERB fund is typical of a mature fund in that it has more people retiring from the system than entering it at this time.

There was a brief discussion about survivors' benefits and how they are determined and paid. Ms. Goodwin explained that many members have survivor beneficiaries, and there is a reduction in the survivor's benefits.

There were general questions about the ERB board's governance structure and how the board elects or selects a chair. Ms. Goodwin advised the members that the board elects its own chair, vice chair and secretary on an annual basis. Ms. Godwin noted that ERB staff could provide the committee with copies of the board's policies and procedures.

There was a discussion involving legal fees and indemnification. Ms. Goodwin noted that the ERB is self-insured. Mr. Moise said that the SIC has asked the Risk Management Division of the General Services Department to provide a written analysis of what legal protection it provides to state volunteers and employees. That analysis will then be reviewed to check for possible gaps in coverage. Members inquired as to whether buying insurance policies rather than self-insurance would be wise. Ms. Goodwin answered that it would require a statutory change.

## **Review of State Investment-Related Legislation, 2010 Session**

Ms. Faust, staff attorney for the LCS, addressed the committee about legislative initiatives from the 2010 session. She indicated that there were three bills — two that passed and one that failed. The bill that failed was the initiative that would have put into statute provisions similar to the New York State's Martin Act. She highlighted the following.

**Senate Finance Committee Substitute for Senate Rules Committee Substitute for Senate Bills 18, 218 and 238 (Laws 2010, Chapter 14):**

- implements some of the "best practices" recommendations made by the EnnisKnupp firm;
- changes the makeup of the body by replacing the SIO and the three public members appointed by the governor with four public members appointed by the New Mexico Legislative Council and two public members appointed by the governor;
- requires that the six new members have at least 10 years of experience in investment or finance;
- transfers the investment decision-making power from the SIO to the SIC;
- authorizes the council to contract for its own custodial bank;
- clarifies that the SIO and the SIC are fiduciaries of all funds under management;
- requires the council to provide opportunity for public comment at any meeting;
- requires greater reporting to the legislature of fund performance and council policies; and
- prohibits a council member from contracting to do business with the council, investment office, Office of the State Treasurer, ERB, PERA, New Mexico Finance Authority or State Board of Finance for two calendar years before the member's appointment or two years after the member's term on the council.

**House Bill 16 (Laws 2010, Chapter 19):**

- provides retirees in the PERA a one-time irrevocable opportunity to deselect their original pension beneficiary and choose another payment option. Previously, a PERA retiree could only have payments changed pursuant to a divorce court order or if the beneficiary predeceased the retiree; and
- in order to avoid a negative fiscal impact on the retirement fund, the amount of the pension under the form of payment chosen will be recalculated to have the same actuarial present value as the current pension. In other words, if a retiree selects a younger beneficiary under this new law, the amount of the pension payment will be reduced to compensate for the longer expected lifetime of the new beneficiary.

**Work Plan and Meeting Schedule**

Mr. Pollard assisted the chair in the discussion concerning the committee's work plan and meeting schedule for the 2010 interim. A motion was made to approve the work plan with the addition of a work plan item asking the attorney general to come before the committee concerning the Fraud Against Taxpayers Act and potential litigation in an effort to recoup money for the state from the losses experienced through poor investments. It was noted that other states have pursued litigation against individuals and investment firms and perhaps New Mexico should be actively pursuing such litigation. The motion was seconded and passed by the committee.

**GRTF Presentation**

Raúl E. Burciaga, director of the LCS, addressed the committee and advised it of the mandate of the New Mexico Legislative Council that, as a cost-savings measure, all interim committee meetings are to be held in Santa Fe unless justified in writing as necessary to be held in another location. He added that meetings should be scheduled in a manner so as to reduce conflicts for voting members. Mr. Burciaga apprised the members of the work of the GRTF and asked the members, on behalf of the legislative council, to look closely at the agencies they oversee for ways to save money through efficiency and other cost-cutting measures. Lastly, Mr. Burciaga told the members that he is honored to serve them in his new position as director. He added that he and his staff at the LCS are happy to work with the legislative body.

**Adjourn**

The chair and members congratulated Mr. Burciaga on his new appointment as director of the LCS. With no other business, the meeting was adjourned at 1:15 p.m.

**MINUTES  
of the  
SECOND MEETING  
of the  
INVESTMENTS OVERSIGHT COMMITTEE**

**July 2, 2010  
State Capitol  
Santa Fe**

The second meeting of the Investments Oversight Committee for the 2010 interim was called to order by Representative John A. Heaton, chair, on Friday, July 2, 2010, at 9:15 a.m. at the State Capitol in Santa Fe.

**Present**

Rep. John A. Heaton, Chair  
Sen. George K. Munoz, Vice Chair  
Rep. Donald E. Bratton  
Sen. Timothy M. Keller  
Rep. Larry A. Larrañaga  
Sen. Carroll H. Leavell  
Rep. Henry Kiki Saavedra  
Sen. John M. Sapien  
Rep. Jim R. Trujillo  
Rep. Luciano "Lucky" Varela

**Absent**

Sen. Tim Eichenberg  
Sen. Steven P. Neville

**Advisory Members**

Rep. Andrew J. Barreras  
Rep. Miguel P. Garcia  
Rep. Roberto "Bobby" J. Gonzales  
Sen. Stuart Ingle  
Rep. Patricia A. Lundstrom  
Sen. Mary Kay Papan  
Rep. Jane E. Powdrell-Culbert

Sen. Carlos R. Cisneros  
Sen. William H. Payne  
Sen. John C. Ryan  
Sen. Michael S. Sanchez  
Sen. John Arthur Smith  
Rep. Sheryl Williams Stapleton  
Rep. Shirley A. Tyler  
Rep. Richard D. Vigil  
Sen. Peter Wirth

**Staff**

Tom Pollard, Legislative Council Service (LCS)  
Doris Faust, LCS  
Claudia Armijo, LCS

**Guests**

The guest list is located in the meeting file.

**Handouts**

Handouts and written testimony are in the meeting file.

## **Friday, July 2**

Representative Heaton welcomed the committee members and guests. He advised the members that the meeting would be audiocast and that future meetings would likely be webcast. Consequently, he asked the members to keep side conversations to a minimum. Next, he requested that the members introduce themselves, which they did.

### **State Investment Council (SIC): Recent Reforms in Board Governance; Investment Policy and Investment Operations Management; New Legislation; the EnnisKnupp Fiduciary Review; Other Agency Initiatives**

Steven Moise, state investment officer (SIO), addressed the committee. He began by providing an overview of events, performance and changes that have taken place at the SIC during the past 90 days. He told the members that the mission of the SIC is to ensure generational equity to all New Mexicans through prudence and excellent investment performance. Due to the downturn and fluctuations in the market, achieving excellent investment performance has been difficult in the recent past. The SIC has adjusted its allocation model in an attempt to even out the consequences of the market swings and to achieve better performance. Mr. Moise advised the members that everything that he would speak to them about has an impact on investment performance.

Mr. Moise stated that the SIC had collaborated with the Public Employees Retirement Association (PERA) and the Educational Retirement Board (ERB). He opined that the agencies must communicate with each other, and that is what they have been doing. He also noted that Senate Bill 18 changed the way the SIO is appointed by the SIC and that the council itself has changed. He added that the council members have been working diligently and have held program meetings in Santa Fe recently, with some members traveling long distances, demonstrating a major commitment to serving the State of New Mexico. He stated that the governance of the SIC has changed internally. In the past, there was no investment committee, and, now, there are two internal committees, one composed of SIC staff and the other of council members and one SIC staff member. The committees have been working over the past few months and still have more work to complete. They are developing charters and are operating the organization like a business. Mr. Moise stated that the SIC would appreciate the legislature reviewing the charters and making helpful observations and suggestions. He added that there are three committees formed by the council. Those committees focus on investments, audits and governance. Each committee has a long list of tasks to be completed, and the committees are working with the SIC staff. He assured committee members that the SIC is not trying to create a bureaucracy; rather, it is trying to work as a business model and manage the permanent funds in a respectful manner. Mr. Moise reminded the members that the State Personnel Office (SPO) had conducted a two-month review of the SIC office. He stated that he received the report from the SPO recently. It was his opinion that the SPO had done a great job in its review. He said that he would review the report and then meet with the SPO staff the following week to discuss any additional work that might be completed and any changes that may be made as a result of the review.

Mr. Moise told the members that the asset allocation model that he had mentioned earlier was adopted by the SIC in May. He noted that equities exposure was reduced, hedge funds were reduced and the SIC was reviewing its overall investment policy. He said that the committee can expect updates on any changes in policy as they occur.

Next, Mr. Moise said that the SIC has issued several requests for proposals (RFPs), one in connection with legal recoveries. He explained that the SIC received a number of responses to the RFPs and will make a decision at its July meeting regarding the possibility of recovering money that was inappropriately paid to replacement agents and recovering losses in that area.

Next, Mr. Moise stated that the SIC had just completed negotiations of an agreement with a film consultant, Peter Beckham. He added that Mr. Beckham's compensation and scope of service will be reduced. He noted that Mr. Beckham would be coordinating an audit program for the SIC regarding its film industry business. He said that the film industry members do not always respond fully unless an audit is conducted; so, the SIC is asking Mr. Beckham to engage the services of a film auditor to review the various films that receive funding and to determine whether each film has a probable chance of being profitable.

Next, he explained that the SIC is searching for hedge fund managers and managers of fixed income portfolios. The SIC terminated six managers in May and June based, primarily on their performance and on overcompensation and for general personnel changes. The assets subject to the funds handled by managers that have been terminated will be reallocated in accordance with the newly adopted asset allocation model.

With regard to legal investigations, the FBI continues to request interviews with SIC staff. The SIC is working with the Risk Management Division of the General Services Department to provide counsel for those who need it. He noted that the SIC has ongoing litigation involving Countrywide and the Region Two Housing Authority. He added that the Countrywide litigation is very complex, there is a mediator involved and the litigation remains unresolved. He noted that, if necessary, the SIC would go to trial against Countrywide this fall. In conclusion, he said that the lawsuits are costing the State of New Mexico a great deal of money.

Mr. Moise told the members that the SIC had received a response from the state's insurance agent concerning how the state might save money by purchasing insurance. The SIC is currently reviewing the response. He also noted that the SIC has completed its change to using JP Morgan as its custody agent.

Mr. Moise next spoke about the land grant permanent funds, noting that the target rate of return for the funds is 8.5% gross of fees. He said that the SIC is analyzing the probability of achieving this target rate. Additionally, the SIC is searching for a deputy for investments and is using a search firm based out of Ohio. He noted that the SIC is pleased with the work of the Ohio-based search firm thus far and hopes to select someone within the next 60 days.

Turning to legislative matters, Mr. Moise said that the SIC is looking at the impact of Senate Bill 18 (2010) and is developing recommendations, which will be brought forth for the

next legislative session. He added that the SIC is reviewing internal versus external management of its funds. It has asked a consultant to do an initial analysis and provide the SIC with data so that its staff can review and then make possible recommendations to the SIC regarding which funds should be managed internally and which externally.

There was a brief discussion among the members, and many members thanked Mr. Moise for his all-inclusive attitude and preparation when appearing before the committee. Some members asked questions regarding the SIC interaction with the attorney general on legal matters, specifically any possible recovery of lost fees. Mr. Moise said that he had met with Attorney General Gary King on three occasions over the past 90 days. He added that the Attorney General's Office is cooperating with the SIC in terms of searching for recovery counsel and regarding the issue of participation in a class action suit for recovery. He noted that the SIC legal staff would be leading the recovery effort.

Mr. Moise advised the members that he is looking very carefully at the internal operations of the SIC office. He said that how much, if any, money might be recovered as a result of litigation is difficult to assess. He noted that the SIC has spent over \$11 million in legal fees in the past year. He added that the SIC does not want to repeat that type of expenditure, but it could happen. He said that \$5 million has been spent in the past year on the Countrywide litigation, noting that it was not risk management money, but came out of the SIC budget. In response to questions concerning how the SIC will pay for the legal expenses directed toward recovery, Mr. Moise said that the SIC is issuing RFPs for legal services on a contingency fee basis. The attorney general has concurred that the SIC can pay an appropriate contingency fee, which will not provide a windfall for the chosen legal firm.

Some committee members inquired as to the SIC's ability to charge those who request the production of documents pertinent to the investigation. Charles Wollman, the SIC's public information officer, said that the SIC cannot charge for the document production pursuant to New Mexico public records law. He further clarified that it can charge for costs it deems excessive, noting that many of the requests for documents number in the hundreds to the millions. He said that the SIC can charge up to \$1.00 per page, but that amount does not cover the costs associated with copying, storing on a database and producing the documents resulting from the numerous requests. Members asked if Mr. Wollman knew the total cost for the production of all the information. He said that he could not estimate the cost; however, he noted that the SIC is trying to work with requesters to shrink the requests down to a manageable size. He said that some of the requests have been so broad that the SIC has had to go to court to decipher exactly what it needed to provide.

There was a brief discussion regarding the 8.5% benchmark target of the SIC for its investments. Some members questioned the validity of the benchmark. Mr. Moise noted that it is being studied, and there is a reasonable chance that a reduction could be recommended. He added that the losses from the Countrywide deal exceed \$100 million. When asked by members if the legal counsel representing the SIC in the Countrywide litigation was working on a contingency basis, Mr. Moise replied that it was not. The discussion continued and emphasized some members' concerns regarding the SIC governance statute as it applies to individuals

selecting their own legal counsel, which is then paid for by the state. There was a discussion about obtaining an insurance policy for the payment of such legal fees. Mr. Moise stated that the SIC intends to review its legal representation policy to reduce its exposure to legal fees. He added that the policy review should be ready for action by the council at its July 27 meeting.

The discussion returned to the 8.5% gross of fees rate of return targeted by the SIC. Some members asked if it would be beneficial to bring all of the state's investments together, creating economies of scale. Mr. Moise noted that the EnnisKnupp study mentioned that scenario as a possibility, and it was a point deserving of further study.

Mr. Moise next turned to the subject of the EnnisKnupp fiduciary review completed for the SIC. He advised the members that the review included a total of 82 recommendations, six of which have been addressed by the passage of Senate Bill 18, leaving 76 other recommendations remaining. Of those remaining recommendations, two have been completed through the work of the SIC and the committees, and about 23 are currently being addressed and may be revised. He noted that there were 28 recommendations that are not under active consideration by the SIC and will be subject to partial action or additional review or require a statutory change. He assured the members that none of the 82 recommendations are being ignored. His comments were followed by a brief discussion regarding how the SIC is prioritizing its evaluations and actions concerning the recommendations. Mr. Moise noted that, in his recollection, the priorities were established by EnnisKnupp. He noted that any action would likely be completed within the next 12 months. This led to some questions from the members regarding the SIC and its internal and external managers.

In closing, Mr. Moise advised the members that the 15% limit on international investments is a limitation that the SIC would like to change and that it will probably be seeking legislation to accomplish such a change.

### **Overview of the SIC's Economically Targeted Investment Program: Specific Program Components and Investment and Economic Returns for Individual Projects**

Mr. Moise introduced Greg Kulka, director of private equity and economically targeted investments for the SIC. Mr. Kulka has been with the SIC for nearly nine years and is responsible for the international and New Mexico private equity programs, as well as the film program. Referring to the handout, Mr. Kulka noted that the first page contained a list of all the outstanding film projects. The total amount outstanding is just over \$97 million in loans, with the total capacity being 6% of the fund total, according to statute. Mr. Kulka explained that, pursuant to policy, when a film is approved for a loan, the approval is good for nine months. If something happens and the film project cannot meet the nine-month requirements for the loan, it will not close. Currently, the remaining capacity is \$81 million. He added that a list of all the loans that have matured or been paid off is included in the handout. He noted that \$147 million has been expended on the loans. A list of loans that were approved but never closed and an accounting estimating the economic impact resulting from the loans are also in the handout. He noted that one of the requirements for receiving a film loan is that 60% or more of the production crew must be composed of New Mexico residents. Additionally, it is required that 85% or more of the film be shot in New Mexico.

There was a discussion among the members concerning whether providing 0% loans is impacting the state in a positive fiscal manner. Some members asked if the state is getting profits on the back end after the movies are released. Mr. Kulka said that the state receives a percentage that is applied to the adjusted gross profit of the films. The exact amount is negotiated on a contract-by-contract basis. Mr. Kulka opined that the real reason filmmakers are coming to New Mexico is for the tax credit. He said that the limit placed on film loans is \$15 million, generally making it useful when applied to a film with a \$15 million to \$20 million budget. Usually, this means an independent film. He said that there has been an ongoing effort to participate in larger budget films, but those films generally get funding through studios and have plenty of access to financing. He highlighted the fact that the movie *The Book of Eli*, which grossed about \$120 million and is a film the state was able to participate in, will likely reap good returns as a result of that participation. When asked how long New Mexico can anticipate receiving money, Mr. Kulka said the state could still be receiving checks 25 years from now.

The members discussed whether the state could achieve a better benefit if interest is charged on film industry loans. Many members voiced their desire to have more information, enabling a better understanding of the true economic impact of the film loan project, particularly as it relates to job creation. When asked whether the film loans are a good investment, Mr. Moise declined to answer, saying that it was a legislative decision to create film loan statutory provisions and that the SIC merely implements those provisions. Some members noted that perhaps the film loan policy needs to be scrutinized, particularly in economic times when the legislature could be asking taxpayers to pay more in taxes. It was noted that in the recent *Governing Magazine*, many states are beginning to question the economic returns from film industry incentives. Mr. Moise pointed out that the film loans are not mandated by statute; rather, they are allowed. The point was made that statutory changes created the Private Equity Investment Advisory Committee (PEIAC), which has not yet been constituted. Mr. Moise said that the SIC is in the process of naming the members and that Mike Martin has agreed to be the chair. Some committee members suggested that any future film loans be placed on hold until the PEIAC can assess each film project. Finally, upon questioning, Mr. Kulka said that there have been no loan defaults on any of the film loan projects.

The committee recessed for lunch.

Representative Heaton reconvened the meeting at 1:30 p.m. The members were directed to the handout, prepared by Sun Mountain Capital, providing an update on the New Mexico Private Equity Investment Program. Mr. Kulka said that \$250.5 million has been drawn against the statutory cap of \$319.4 million. He added that there has been a freeze on new commitments and that the freeze was instituted in the fourth quarter of 2008 due to market volatility and declining market valuations, which continued through 2009. He opined that he is optimistic that the program could begin making new commitments by the third quarter of 2010. Mr. Kulka told the committee that financial performance has been negatively impacted by the market conditions. He said the private equity markets generally lag behind public markets by six to nine months, as private investors digest the effect of market conditions at a slower pace than public market investors. Mr. Kulka directed the members' attention to the handout, which indicates that the program performance has consistently exceeded its benchmarks since 2004. He also noted that

the handout illustrates the significant impact of the New Mexico Private Equity Investment Program. The handout also lists the seven New Mexico companies that have been funded by the program. Some members asked for more information about those companies; for example, how many employees they have and what the companies' financial values are. There was some speculation that some of the information sought could be considered proprietary in nature or inappropriate for public disclosure. Most members agreed that it is critical to have information regarding companies in which the state is investing.

Paul Goblet, New Mexico Small Business Investment Corporation (SBIC), noted that he had come before the committee four years ago and welcomed the opportunity to speak again. He reminded the members that the SBIC was created by legislation in 2000. He said that the SBIC now gets \$47 million, or 1%, of the severance tax fund. He added that the SBIC is structured like the SIC, with six public board members appointed by the governor. He added that the goal of the SBIC is to be a cost-effective conduit of capital for small business, noting that it does not make direct investments. He told the members that the average loan amount is \$11,000, and the largest loan was for \$300,000. Again, the discussion turned toward the topic of the proprietary information and disclosure concerning businesses that have benefited from loans and programs such as those offered by the SBIC.

**ERB: Recent Reforms in Board Governance; Investment Policy and Investment Operations Management; New Legislation; the EnnisKnupp Fiduciary Review; Other Agency Initiatives**

Jan Goodwin, executive director of the ERB, led a discussion regarding the EnnisKnupp ERB-related recommendations. She began by noting that there were no recommendations made regarding the membership composition of the ERB board. However, EnnisKnupp offered 57 recommendations, which the ERB staff has been reviewing and analyzing. Referring to the handout, Ms. Goodwin highlighted the pertinent recommendations. She noted that the ERB already conducts fiduciary training on a regular basis. One of the recommendations was that the ERB should seek a statutory provision that would revive an exception to the Open Meetings Act regarding discussions of investment of private equities. However, Ms. Goodwin told the members that it is the position of the ERB, at this time, that the recommendation not be pursued. She also said that it had been recommended that the ERB no longer be subject to the state personnel rules relating to hiring practices and that the ERB be removed from the budgetary authority of the legislature.

There was a general discussion regarding the recommendations made by EnnisKnupp. Some members noted that the recommendations seemed broad and applicable to virtually any state agency. Ms. Goodwin noted that some of the recommendation concepts involved policies that were already in place at the ERB, but EnnisKnupp recommended that the ERB more clearly spell out those policies.

**PERA: Recent Reforms in Board Governance; Investment Policy and Investment Operations Management; New Legislation; the EnnisKnupp Fiduciary Review; Other Agency Initiatives**

Terry Slattery, executive director of the PERA, introduced some of the PERA board members that were present in the audience. He told the members that there were no recent reforms to the PERA board governance, but that training had been held at the board's recent retreat. The training involved the use of an independent fiduciary services firm that provided the board's training at the end of May 2010. He summarized the details of the training by noting that there was a difference between a named fiduciary and a deemed fiduciary and compliance with the fiduciary responsibility. He said that the training emphasized the concepts of loyalty to the plan, the system and the members, as well as the duty to act in a prudent manner and follow the rules, the statute and any policies in place. He also stated that a failure to comply with fiduciary duties is, by definition, a breach of fiduciary duty.

On the subject of EnnisKnupp's recommendations pertaining to investment policies, Mr. Slattery noted that the PERA had strengthened its investment policies, citing a decrease in its exposure to public equities from 60% to 54%. He said that the PERA is searching for new managers, specifically, a small cap manager, and later, a large cap manager. As a result of the EnnisKnupp study, the PERA received 49 recommendations, 42 of which the board is either in agreement with or considering.

There was a discussion concerning part-time temporary employees returning to work at the state agencies. Mr. Slattery explained that the way the law is written, there is no distinguishing difference in hiring employees back on a part-time or full-time basis; the employee must suspend the employee's pension. He added that perhaps this was an unintended consequence of the statutory change. The PERA's legal counsel recommended that the legislature consider reinstating an earnings cap of \$25,000 per year so that agencies could hire personnel, such as crossing guards, swimming pool employees, poll workers and similar types of employees.

Representative Heaton adjourned the meeting at 4:00 p.m.

**MINUTES  
of the  
THIRD MEETING  
of the  
INVESTMENTS OVERSIGHT COMMITTEE**

**August 16, 2010  
State Capitol  
Santa Fe**

The third meeting of the Investments Oversight Committee for the 2010 interim was called to order by Representative John A. Heaton, chair, on Monday, August 16, 2010, at 9:10 a.m. at the State Capitol in Santa Fe.

**Present**

Rep. John A. Heaton, Chair  
Sen. George K. Munoz, Vice Chair  
Rep. Donald E. Bratton  
Sen. Timothy M. Keller  
Rep. Larry A. Larrañaga  
Sen. Carroll H. Leavell  
Sen. Steven P. Neville  
Rep. Henry Kiki Saavedra  
Sen. John M. Sapien  
Rep. Jim R. Trujillo  
Rep. Luciano "Lucky" Varela

**Absent**

Sen. Tim Eichenberg

**Advisory Members**

Sen. Carlos R. Cisneros  
Rep. Miguel P. Garcia  
Rep. Roberto "Bobby" J. Gonzales  
Rep. Patricia A. Lundstrom  
Sen. Mary Kay Papen  
Sen. William H. Payne  
Sen. John C. Ryan

Rep. Andrew J. Barreras  
Sen. Stuart Ingle  
Rep. Jane E. Powdrell-Culbert  
Sen. Michael S. Sanchez  
Sen. John Arthur Smith  
Rep. Sheryl Williams Stapleton  
Rep. Shirley A. Tyler  
Rep. Richard D. Vigil  
Sen. Peter Wirth

**Staff**

Tom Pollard, Legislative Council Service (LCS)  
Doris Faust, LCS  
Claudia Armijo, LCS

**Guests**

The guest list is in the meeting file.

## **Handouts**

Handouts and written testimony are in the meeting file.

## **Monday, August 16**

Representative Heaton welcomed the members of the committee and the guests. He advised the members that the meeting would be audiocast and asked that they keep sidebar conversations to a minimum. He requested that the members introduce themselves before speaking, and he asked that they turn their microphones on before and off after speaking.

Representative Heaton asked for a motion to approve the minutes from the June 14, 2010 and the July 2, 2010 meetings. A motion to approve the minutes was made and seconded, and the motion passed unanimously. After the approval of the minutes, Representative Heaton advised the members that Mr. Pollard had sent out some information regarding the state's investment-related lawsuits. He asked the members to please review that information.

## **New Mexico Attorney General Gary King**

Attorney General Gary King addressed the members. He said he appreciated the opportunity to speak with them regarding the state's investment litigation and investigations. He cautioned that some information the members might seek would not be amenable to public discussion, but he hoped to provide adequate information during the meeting.

Initially, Attorney General King talked about specific fiscal cuts made to the Attorney General's Office (AGO) budget. He also mentioned that the Government Accountability Unit of the AGO would soon have three full-time lawyers. That unit handles such issues as the Region III Housing Authority litigation, commonly referred to as the "Region III case". Four individuals are under indictment in the Region III scandal. The men are facing felony charges, including fraud and money laundering. The State Investment Council (SIC) has filed a separate civil case associated with the Region III criminal case. In the civil case, the SIC is suing two individuals, the former Region III Housing Authority director, Vincent "Smiley" Gallegos, and Region III's former bond counsel, Richard Strumor. The SIC lost \$5 million in 2006 when the Region III Housing Authority defaulted on bonds. The SIC accuses Mr. Strumor of having misrepresented the facts when he urged the SIC to participate in the bond proposal and when he negotiated the terms of those bonds.

Attorney General King explained that there are two ways the AGO can pursue cases of fraud on behalf of the state: civilly or criminally. Civil cases involve allegations of fraud, breach of contract and similar claims. Criminal cases involve charging defendants in criminal court, and sometimes restitution can be sought. He noted that lawyers from the Government Accountability Unit have worked diligently with the U.S. Attorney's Office in the fraud case involving the Bernalillo County Metropolitan Courthouse. In that case, former Senator Manny Aragon was ordered to pay restitution in the amount of \$700 million. Attorney General King said that his office works to get restitution paid to the state. Regarding the Aragon case, he said he did not believe that the restitution had been paid, but he was aware of discussions concerning how it could be paid. Regarding the Region III case, Attorney General King said that the case had been

moving slowly and had been held up for a variety of reasons. He noted that the AGO had asked the legislature to clarify in statute whether the attorney general has the authority to bring charges in corruption cases involving state officials. In the Region III case and in the secretary of state case, the AGO has declarations from the state that the attorney general has the authority to bring those charges. However, the Constitution of New Mexico has broad language indicating that the attorney general has authority to bring such charges when it is deemed to be "in the best interest of the state". Again, Attorney General King stated that clarification in statute by the legislature indicating the attorney general has the authority to file suit would be extremely helpful.

Attorney General King told the members that the case involving the secretary of state, known as the "Help America Vote Act fraud case", has had conflict of interest issues due to the fact that the AGO is charged with representing the secretary of state. The case was originally scheduled to go to trial in October 2010, but since the defendant's previous attorney could no longer provide representation, the judge reset the trial for January 2011.

A case that will not involve any money being paid back to the State of New Mexico is the case against Public Regulation Commissioner Jerome Block, Jr., who is charged with misusing public funds and violating the Election Code. The action was brought pursuant to New Mexico's Voter Action Act, and it is a case of first impression in the district court. In that case, an issue arose concerning how the action could be brought forward. The judge ruled that, according to New Mexico law, a case can be pursued by only one means. The AGO appealed that ruling to the New Mexico Court of Appeals, and the case is currently on hold.

Attorney General King advised committee members that there are currently six investigators in the Government Accountability Unit. The unit employs forensic accountants and ex-U.S. Secret Service personnel. He said the AGO receives a lot of tips, information and leads from the public, from legislators and from others. All the investigators in the unit are busy with active investigations in six or eight cases; Attorney General King noted that it would be inappropriate for him to comment on those cases.

Attorney General King stressed that it is critical that a prosecutor like the attorney general not talk about cases prior to trial. Speaking publicly about a case can taint the jury pool and cause a variety of issues concerning the prosecution of the case. Additionally, Attorney General King said that as a prosecutor he is bound only to bring charges when there is evidence beyond a reasonable doubt that a crime has been committed. When handling fraud and corruption cases, the facts can be quite complicated. Often, the would-be defendant is politically connected and will go to great lengths to hide wrongdoing.

Attorney General King mentioned that the AGO's Medicaid Fraud Unit has nurses and medical investigators. Those personnel may be looking at 60,000 separate transactions. They must review each transaction, highlight transactions that raise concerns and then follow up with a thorough investigation of the specific suspicious transactions. He stressed that these are extremely complicated cases.

Attorney General King mentioned the Martin Act out of the State of New York. He said that the act provides the New York attorney general with a number of tools not available to the attorney general of New Mexico. Pursuant to the Martin Act, the New York attorney general does not have to prove intent in court. Additionally, the New York attorney general has broad subpoena powers and can subpoena financial records, which are often very helpful as evidence. Attorney General King said that the tools provided by New York's Martin Act are helpful not only in prosecutions, but in investigations as well. He opined that any similar legislation enacted in New Mexico would need to be balanced and to be drafted so as to avoid the opportunity for misuse.

Attorney General King explained to the committee that in cases of civil prosecution, the AGO has two or three major tools. Pursuant to New Mexico's Fraud Against Taxpayers Act (FATA), the AGO shares civil authority with other state agencies. Currently, the AGO has a few open cases pursuant to that act. He added that the AGO can bring cases pursuant to other state statutes and also pursuant to federal law. He noted that the AGO can bring actions on behalf of the SIC, the Educational Retirement Board (ERB) and the Public Employees Retirement Association (PERA). Those state agencies are the three main clients of the AGO. The AGO can join or lead a multistate action on behalf of its clients. When filing a case pursuant to the FATA, the action can be brought by whistleblowers or other individuals. The act provides for the relator to present its case to the AGO. Then, the attorney general determines whether to intervene or bring the case. Each case is presented under seal, with no public documents, and is reviewed before the attorney general determines how to move forward. The act is broad and authorizes New Mexico's attorney general to bring cases outside of New Mexico, including multistate actions. Currently, New Mexico is involved in a case involving faulty equipment which was sold to government agencies in all 50 states. The case was originally filed in California, then claims were added and the court brought in the FATA because some of the equipment was sold in New Mexico. If it is determined that the damages for New Mexico in that case are large enough, it may be worthwhile for New Mexico to remove itself from the multistate action to pursue its own case. Attorney General King advised that once the seal on the case has been lifted, he will be free to speak about it.

Some committee members inquired as to the types of indictments that may be pursued by the AGO, specifically the case filed by the former chief investment officer for the ERB, Frank Foy. Mr. Foy filed suit alleging undue pressure and pay-to-play tactics by the Richardson administration and others involving investments with the Chicago-based firm, Vanderbilt Capital (Vanderbilt). Vanderbilt contributed to the governor's presidential campaign. In response to questions regarding his plans involving the case, Attorney General King declined to affirm or deny any intention to file criminal charges. He stressed that it would be improper and imprudent for him to comment. He told the members that there are ongoing investigations that could be compromised by anything he might say in a public setting. Attorney General King added that he has had conversations with certain legislators who said they would prefer civil suits versus criminal cases in many political corruption cases because of the opportunity to recover some of the financial losses associated with the cases. He said he respectfully disagrees with that opinion. He added that pursuing the criminal charges in political corruption cases is imperative. Additionally, he cautioned that political pressure to move cases along at a certain pace is

unacceptable in all circumstances. He said the best way to handle political corruption cases is to let the "bad actors" know that once the AGO gets its teeth into a case, it will not let go, regardless of political pressures.

Attorney General King told committee members that he is working closely with State Investment Offices Steven Moise. He said they have developed a plan that would allow the SIC to pursue civil cases aggressively, giving the AGO the time and ability to pursue criminal charges. He noted that the case involving Vanderbilt is one touted in the press as involving criminal activity. However, he cautioned that such a determination will ultimately depend on the quality of the evidence.

There was a discussion regarding the FATA and whether it is helpful as enacted or needs amending so it can better serve the needs of the AGO. Attorney General King said that his office is pursuing all avenues provided in the act. He said that the AGO is issuing requests for proposals (RFPs) to hire outside counsel to handle cases directly. He added that he also recently created a FATA position and hired an attorney for it. He reiterated that the AGO has worked to give the SIC the authority to issue RFPs to hire counsel to pursue civil cases. Lastly, he noted that the AGO has demonstrated to the courts that it has built a "Chinese wall" within the office for handling complicated and overlapping cases.

There was a discussion regarding the state's obligation to provide legal counsel to state employees accused of malfeasance. Attorney General King said that perhaps the legislature would want to review the law because currently, if a state official acting in an official capacity is accused of malfeasance, the state's Risk Management Division of the General Services Department is required to represent that official. He also said that under federal law, a relator in a law suit must have actual knowledge of wrongdoing. New Mexico does not have a similar requirement, and he opined that perhaps it should.

A discussion ensued regarding payday lending practices and abuses in New Mexico. Committee members asked whether the AGO has pursued any cases involving payday loan companies. Attorney General King said that his office recently filed suits against a company charging 1,000 percent interest and one charging 700 percent interest. Both suits were filed pursuant to the Unfair Practices Act. He advised committee members that in both cases, the defendants are arguing that because New Mexico statutes do not provide for a cap on interest rates, the AGO does not have the authority to file the suits.

There was a lengthy discussion regarding legislators' perceived inability to be informed and updated regarding cases the AGO is investigating. Several committee members asked if there is a way for the attorney general to let the legislature know about certain types of cases that are being considered. Attorney General King responded by saying that any such notifications would jeopardize the cases involved. When asked if the attorney general would support a legislative initiative to provide a statutory initiative like New York's Martin Act, Attorney General King said his office would support it. However, he cautioned that the legislature might want to ask the LCS to review the provisions carefully with constitutionality in mind.

Committee members requested detailed information regarding financial recoveries achieved by the AGO. Attorney General King said he would see that the members got the information. He was also asked to research the issue of the state providing legal counsel for employees accused of wrongdoing and to come up with a statutory fix for the situation. Lastly, the chair asked Attorney General King to provide guidance and recommendations to the committee regarding any legislative initiatives that would be helpful, including but not limited to the Martin Act issues and provisions of the FATA.

**SIC: Current and Proposed Litigation Efforts; Strategies to Recover SIC Funds Lost to Investment Fraud and Other Illegal Activities or Paid to Third-Party Marketers**

Mr. Moise and the SIC's general counsel, Bryan Otero, gave a presentation to the committee. Mr. Moise said he appreciates the attorney general working in collaboration with Mr. Moise and the SIC on important litigation matters.

Mr. Moise spoke about a trip that he and Mr. Otero took to New York City to oversee the transition from the Paul Hastings law firm to the Day Pitney law firm, which is handling legal claims for the SIC on a contingency fee basis. Mr. Moise said that he told the Pitney firm that the SIC is extremely interested not only in recovering funds for the State of New Mexico, but also in sending a message to investment firms that the state will pursue civil and/or criminal charges against wrongdoers.

Mr. Moise advised the committee that the SIC is in the process of hiring a new deputy for investments. He noted that the SIC has received resumés from a number of excellent candidates.

Mr. Otero directed the members' attention to a handout entitled "SIC Legal Issues Update", dated August 16, 2010. He spoke about cases in which the SIC was involved from 2006 through 2009, which ranged from class action civil claims to breach of contract, breach of fiduciary duty and agent placement fees. Mr. Otero said the SIC has recovered an excess of \$100 million as the result of those cases.

Mr. Otero directed the members' attention to ongoing SIC litigation, including claims involving securities law violations, fraud, misrepresentation and class action in which the SIC or the state of New Mexico is the lead plaintiff.

Mr. Otero noted that the AGO is assisting the SIC in its pursuit of the civil case against Region III. The claims in that case include unjust enrichment, securities law violations, violations of the New Mexico Uniform Securities Act and misrepresentation. Mr. Otero said that the SIC is represented by the Risk Management Division in the case initiated by Mr. Foy. Mr. Otero also noted that in a case involving Countrywide Financial, attorney fees have exceeded \$5 million. He noted that the state's losses in that case are significant and that the SIC is paying its own legal fees. He added that the SIC expects to pay up to \$2.5 million at trial in that case, but the potential for recovery could be \$100 million, which represents the range of losses in the case. He noted that the ERB and the PERA are also plaintiffs in the lawsuit, but they experienced lower losses.

In the Austin Capital class action lawsuit — a case involving Bernie Madoff, who was convicted of securities fraud — the SIC is a member of the class. The AGO is representing the SIC.

Mr. Otero clarified for the members that the SIC had transferred its litigation involving placement agents, managers, Aldus Equity and others to the Day Pitney law firm. He said that this action was taken through the RFP process and that the SIC was assisted by the AGO in drafting the RFP.

Lastly, Mr. Otero explained that the SIC has been inundated with public information requests. A total of 28 such requests have been processed by the SIC since 2009. Many of those requests seek thousands, and some even millions, of pages of documents. He said that the SIC is cooperating with both the United States Department of Justice and the Securities Exchange Commission. The subject matter of all of the investigations involve placement fees.

### **ERB and PERA: Current and Proposed Litigation Efforts; Strategies to Recover SIC Funds Lost to Investment Fraud and Other Illegal Activities Paid to Third-Party Marketers**

There was a general discussion about the money the state lost as a result of bad investments and how many of those investment losses were the result of fraud. Chris Schatzman, general counsel for the ERB, noted that it can be difficult to determine when an investment is simply a bad investment, or whether fraud is part of the equation. A number of committee members expressed concern over not knowing the actual identities of the individuals behind a number of the bad investments. Mr. Schatzman said the pattern of investments suggests that some of the placement agents were intentionally misleading. Members voiced concerns about relationships not disclosed and whether the lack of disclosure is in material breach of fiduciary duty. When discussing the state's private equity funds, Mr. Schatzman pointed out that on many occasions, the third-party placement agent who placed the investment was not the same as the person disclosed. This fact suggests intentional concealment. Mr. Schatzman was asked about the statute of limitations applicable to the potential cases for recovery being considered by the ERB. He told the members that the statute of limitations varies with each claim. He cited the example of the Vanderbilt case, in which the investment was made in 2006 and was written off of the ERB balance sheet in 2007. The ERB did not learn about the potential issues until 2009. Consequently, there are different arguments that could be made regarding when the statute of limitations begins in that case. Mr. Schatzman stressed that these types of cases are very new to New Mexico. He also explained that the various cases are being brought pursuant to a variety of legal theories, primarily to avoid running into constitutional issues that could arise pursuant to the FATA.

The committee members asked to be apprised regarding the statute of limitations applicable to the ERB's ongoing litigation. Members asked the ERB staff to provide information regarding all of the companies being evaluated as potential defendants. Mr. Schatzman warned that as the ERB continues to investigate the issues, it will become aware of additional people or entities suspected of wrongdoing. He said identifying those people or entities prior to getting information from them could seriously jeopardize any of the cases the ERB might pursue.

Next, there was a general discussion about changing the makeup of the ERB and the PERA boards. It was suggested that requiring board members to possess more expertise pertinent to their duties as board members might be a positive move. Committee members suggested that a discussion of the subject should be added as an agenda item at the boards' meetings.

Jan Goodwin, executive director, ERB, told the committee that the ERB has retained the law firm of Freedman Boyd Hollander Goldberg Ives & Duncan, P.A. (Freedman Boyd), and Pomerantz Haudek Grossman & Gross LLP (Pomerantz Haudek) to represent the ERB in potential litigation against Aldus Equity; Saul Meyer, Aldus Equity's principal partner; and others to recover damages resulting from recommending certain investments to the ERB while Aldus Equity was the board's private equity investment advisor from late 2006 through May 2009. Additionally, placement agents who received fees related to those investments may also be named as defendants. Outside counsel is working closely with ERB staff to finalize the complaint. The potential lawsuit arises in part from Meyer's admission, in the course of his pleading guilty to an indictment secured by the New York attorney general, that on numerous occasions he recommended investments to New Mexico that were pushed on him by politically connected individuals in New Mexico. However, Mr. Meyer did not provide specifics in his allegations regarding those investment recommendations.

Ms. Goodwin said the ERB invested \$40 million in Vanderbilt, which held the equity strip portion of collateralized debt obligations (CDOs). A substantial portion of the investment pool was invested in CDOs that held securitized mortgages originated by other parties and sold to Vanderbilt. The equity strips received cash flows after payments were made on the rated securities created from those mortgages. The ERB wrote off its entire investment in 2007. In April 2009, the ERB learned for the first time that a placement agent fee had been paid to Mark Herrera in connection with this investment. The ERB has directed Freedman Boyd and Pomerantz Haudek to review this transaction and the events surrounding it, with the goal of bringing suit to recover damages. The review will include an analysis of the manner in which the underlying mortgages were originated and securitized and the role of the placement agent in the investment.

With regard to third-party placement agents and other private equity investments, Ms. Goodwin said that the ERB has directed its outside counsel to review transactions, excluding private equity investments, in which investment managers made payments to placement agents or in which the role of the placement agents and the fees paid were not accurately or fully disclosed to the ERB. The intent of the review is to determine whether the ERB was damaged by the failure to make these disclosures and to recover damages when or where appropriate.

Ms. Goodwin said the ERB has agreed to serve as a class representative for public pension funds in a securities class action case against Boston Capital, a fund of hedge funds, and its affiliated and parent entities: KeyCorp, a regional bank headquartered in Ohio; Victory Capital Management; and Boston Capital Management GP Corp. Boston Capital invested in the Rye Select Broad Market Fund LP, which in turn invested with Bernie Madoff. Austin Capital has ceased business operations and is in the process of liquidating its hedge fund investments.

Robbins Geller Rudman & Dowd LLP, a national securities litigation firm, is counsel for the class action.

Regarding litigation against Countrywide, Ms. Goodwin said the ERB joined with the SIC and the PERA, alleging misrepresentations and fraud in connection with Countrywide's issuance of certain mortgage-backed securities. The SIC is acting as the principal plaintiff in this litigation. The ERB held approximately 0.06 percent of the total securities at issue and incurred losses of less than \$250,000. Discovery is nearly completed in this case.

Ms. Goodwin stated that, in general, numerous securities class action lawsuits are brought against publicly traded companies by public pension funds, pursuant to federal securities law. Due to limited resources, the ERB generally is a lead plaintiff only when it has a substantial investment in a company and no other pension fund has brought the lawsuit. Also, as a consequence of limited resources, the ERB has not opted out of class action lawsuits brought by others in order to bring its own separate action. If a class action settlement is approved by a court, the ERB receives its share of the settlement fund when it is distributed. The ERB relies on the state's custodial bank and securities class action law firms under contract with the AGO to monitor litigation, and it relies on the custodial bank to file the ERB's claims.

Terry Slattery, executive director, PERA, discussed the PERA's recent organizational and investment-related changes. He said the investment division was reorganized in late 2009 to align the professional staff with the fund's assets allocation and corresponding workloads. He said the PERA contracts with two consultants: the general consultant, R.V. Kuhns, is responsible for total fund consulting, performance reporting, asset allocation, asset class structure studies and consulting specific to publicly traded investment classes; Cliffwater Consultants is the gatekeeper providing sourcing, due diligence, analysis, accounting and reconciliation for all alternative asset classes, hedge funds, private equity funds, real estate and real assets.

Mr. Slattery said that the PERA board recently approved an asset allocation change that increases alternative investments, fixed-income investments and international equities by decreasing the domestic equity allocation. He stated that this action was designed to lower the risk in the portfolio by reducing the most volatile asset classes and increasing asset classes with lower correlations to equities, such as fixed-income and alternative investments. Additionally, the board hopes the action will improve investment returns by increasing high-yielding alternative investments. Mr. Slattery explained that the recommendations for new actively managed mandates, mandate consolidations or rebalancing within seven asset classes resulted from systematic asset class structure studies conducted by the general consultants in coordination with the PERA staff.

### **PERA, SIC and ERB Panel Discussion: Potential for Increased Investment Earnings and/or Cost Savings from Refining or Restructuring the Agencies' Investment Functions**

There was a panel discussion regarding the possibility of consolidating the various state funds. Mr. Moise said the state has more than \$35 billion in institutional investment funds managed by four separate and segregated entities. Each entity has a different board, different clients and, in part, different governing statutes. Each entity operates independently. Mr. Moise

pointed out that the funds all have different contribution sources and distribution requirements. Consequently, the investment strategies, practices and long-term goals at the ERB and the PERA often are different from those of the permanent funds managed by the SIC. Another notable difference is the legislature's authorization of certain differential rate and economically targeted investments in the Severance Tax Permanent Fund. Mr. Moise said that at the very core, the SIC, the PERA and the ERB have the same long-term mission: the growth of funds through superior returns, to be achieved through professional, prudent and ethical investment practices.

Mr. Moise urged the committee to consider carefully the consolidation of the investment funds. He also recommended an objective analysis of the issue. He said that even if the consolidation were not ultimately executed, the analysis could provide beneficial information to the state's investment agencies as they evolve and strive to improve their operations. Mr. Moise stressed that the analysis should be completed by a highly qualified objective outside agency, and not the legislature or a state agency.

Ms. Goodwin said there are pros and cons to consolidating all of the state investment funds. She provided a chart illustrating one possible way of consolidating the PERA, ERB and SIC boards to form a nine-member consolidated investment agency with three members from each of the originating boards. According to Ms. Goodwin, this could result in cost savings in management fees, systems expenses and salaries. She noted that any such savings are difficult to estimate. Ms. Goodwin further noted that since there would continue to be several strategies involved in the various investments, the potential savings related to staffing could be minimal.

Committee members said that looking closely at the issue is in the best long-term interest of the state. Some members noted that other states consolidate all of their funds for investing purposes and that consolidating the funds does not necessarily mean that all funds would be automatically consolidated into one. It was generally agreed that there may be some situations in which consolidation makes sense and others where it does not. Some members suggested that any restructuring of state funds should first include input and discussions from stakeholders. Members generally agreed that the committee should be prepared to make recommendations regarding the consolidation issues. Additionally, members returned to the topic of changing the composition of board members, specifically for the ERB and the PERA. They agreed to send comments, ideas and concerns to Mr. Pollard, who will compile and organize them for discussion at the October meeting. With no further business, the meeting was adjourned at 4:05 p.m.

**MINUTES  
of the  
FOURTH MEETING  
of the  
INVESTMENTS OVERSIGHT COMMITTEE**

**December 1, 2010  
Room 307, State Capitol  
Santa Fe**

The fourth meeting of the Investments Oversight Committee (IOC) for the 2010 interim was called to order by Representative John A. Heaton, chair, on Wednesday, December 1, 2010, at 9:07 a.m. at the State Capitol in Santa Fe.

**Present**

Rep. John A. Heaton, Chair  
Sen. George K. Munoz, Vice Chair  
Rep. Donald E. Bratton  
Sen. Timothy M. Keller  
Rep. Larry A. Larrañaga  
Sen. Carroll H. Leavell  
Sen. Steven P. Neville  
Rep. Henry Kiki Saavedra  
Sen. John M. Sapien  
Rep. Jim R. Trujillo  
Rep. Luciano "Lucky" Varela

**Absent**

Sen. Tim Eichenberg

**Advisory Members**

Sen. Carlos R. Cisneros  
Rep. Miguel P. Garcia  
Rep. Roberto "Bobby" J. Gonzales  
Sen. Mary Kay Papen  
Sen. John C. Ryan  
Sen. John Arthur Smith  
Rep. Sheryl Williams Stapleton  
Rep. Shirley A. Tyler

Rep. Andrew J. Barreras  
Sen. Stuart Ingle  
Rep. Patricia A. Lundstrom  
Sen. William H. Payne  
Rep. Jane E. Powdrell-Culbert  
Sen. Michael S. Sanchez  
Rep. Richard D. Vigil  
Sen. Peter Wirth

**Guest Legislator**

Rep. Dennis J. Kintigh

**Staff**

Tom Pollard, Legislative Council Service (LCS)  
Doris Faust, LCS  
Claudia Armijo, LCS

**Guests**

The guest list is located in the meeting file.

## **Handouts**

Handouts and written testimony are in the meeting file.

**Note: These minutes should be considered to be in draft form. The IOC has not had the opportunity to consider these minutes for approval.**

## **Wednesday, December 1**

Representative Heaton welcomed committee members and guests. He advised the members that the meeting would be audiocast and asked that they keep sidebar conversations to a minimum. Next, he requested that the members introduce themselves before speaking, and he asked that they turn their microphones on before speaking and off after speaking.

Representative Heaton asked for a motion to approve the minutes from the August 16, 2010 meeting. A motion to approve the minutes was made and seconded, and the motion passed unanimously.

## **Educational Retirement Board (ERB) Recent Investment Performance, Outlook for Educational Retirement Fund Solvency and Legislative Proposals**

Jan Goodwin, executive director of the ERB, and Bob Jacksha, chief investment officer of the ERB, addressed the members regarding the ERB. Mr. Jacksha began by referring to the handout dated November 18, 2010, which contains the ERB third-quarter 2010 executive summary. He told the members that, recently, the market environment has been good. He directed the members' attention to page 4 of the handout, which provides a summary of the ERB investment results. According to Mr. Jacksha, over the last 12 months, the Educational Retirement Fund experienced a net investment gain of \$1.1 billion, which includes a net investment gain of \$688.6 million during the quarter. Total assets increased from \$7.9 billion in September 2009 to \$8.8 billion on September 30, 2010. There was \$169.7 million in net distributions during the same period.

Mr. Jacksha said that during the past five years, the fund returned 4.7% per annum, outperforming its policy benchmark by 1.1% and ranking in the fourteenth percentile of the Independent Consultant Cooperative's public funds greater than \$1 billion universe. He also noted that the ERB decreased the fund's long-term equity exposure, and as a consequence, if the bull market returns, the Educational Retirement Fund may not perform as well as other funds.

There was a brief discussion regarding how private equities are valued. Mr. Jacksha said that private equities are usually valued pursuant to the Governmental Accounting Standards Board (GASB), which lays out certain criteria. Members advised that the ERB should value its private equity holdings conservatively. When asked why the ERB is moving out of private equities, Mr. Jacksha said it was a decision to diversify the fund's holdings more fully and to minimize the negative impacts during bear markets. Some members questioned further the decision to move away from private equities. Mr. Jacksha clarified that it was a policy decision set into place in 2006 to move away from volatile asset classes.

Ms. Goodwin addressed the members regarding the outlook for the solvency of the ERB. Prior to her presentation, Senator Smith noted that as a result of the proposed plan changes being recommended by the ERB, most of the legislators are getting emails against the proposed

changes. He added that the board members should be prepared to support the legislature through the reform process, but he sees that the ERB is still wrestling with the issue.

Ms. Goodwin referred to the handout dated December 1, 2010 relating to the ERB's solvency outlook and the ERB's proposed legislation. She told the members that the ERB has developed preliminary recommendations to improve the ERB's solvency. Those preliminary recommendations would result in a 102% funded ratio (the ratio of the actuarial value of the fund's assets to the actuarial accrued liability) within 30 years. She stressed that the board members believe that all of the ERB members, both current and future, should share the burden of changes intended to make the fund solvent. After the preliminary results received by the ERB's actuaries projected the 102% funded ratio, the board directed the ERB staff to suggest changes that would achieve the GASB recommended 80% funding ratio within the desired 30-year period. She noted that the board would be continuing its work on the proposed plan changes at its December 10, 2010 meeting. She added that the ERB has received many proposals for changes from a variety of groups, including the National Education Association (NEA) and the University of New Mexico (UNM), and from individuals. She said that the staff intends to review all of the proposals.

Next, Ms. Goodwin directed the committee to page 3 of the handout, which graphically displays the actuarial accrued liability of the Educational Retirement Fund from 2000 through 2010. She noted that the actuarial values shown reflect a smoothing period of five years. She noted that the funded ratio stands at 65.7% in 2010. Five years ago, the ratio was at 75.4%. She pointed out that in 2011, the ratio reached an all-time high of 91.9%. The ratio began to decrease as the negative investment experience in fiscal years 2001 through 2003 was phased into the fund's actuarial value of assets. Ms. Goodwin opined that without any changes to the ERB plan, the fund will never meet the recommended 80% funding ratio. She additionally reminded members that according to the GASB standards, the funding period needed to achieve the recommended 80% funding ratio should not exceed 30 years.

When members questioned Ms. Goodwin regarding the cost-of-living adjustment (COLA), she responded that ERB retirees are not eligible for the COLA until they reach the age of 65, unless they are retired on disability. She also noted that the COLA is calculated according to the Consumer Price Index, and it is set at a maximum of 4%.

Next, Ms. Goodwin told the members that the ERB hired the Albuquerque-based polling firm Research & Polling, Inc. to conduct a survey consisting of polling ERB members. The purpose of the survey was to find out what, if any, support polled members might have for certain changes to the ERB plan. The survey was conducted in the week beginning October 30, 2010. The ERB staff provided Research & Polling with contact numbers for 400 randomly selected active members. Of those polled, 35% were higher education employees and 65% percent were K-12 school employees. Ms. Goodwin noted that those percentages reflect the breakdown of the current ERB active membership.

Ms. Goodwin next shared the results of the poll. She highlighted the results, telling the committee members that all of the survey results can be found on the ERB web site. She noted that 35% of those polled approved an increase of member contributions, while only 5% approved a decrease in retirement benefit payments for current employees. According to Ms. Goodwin, 41% of those polled approved a combination of increased member contributions and decreased

retiree benefits for current employees for the purpose of providing solvency to the Educational Retirement Fund.

Ms. Goodwin said that members polled are divided on the issues of increasing current members' contributions by 1%. She also noted that members polled are not willing to reduce the multiplier for future service, nor are they willing to reduce the COLA for current workers upon their retirement.

Ms. Goodwin shared the board's recommendations, explaining that the proposed changes would apply to all active members, meaning that as of the effective date of the changes, there would no longer be a two-tiered system for members. Currently, there are Tier 1 and Tier 2 ERB members, with varying requirements and benefits between the two tiers.

The changes proposed by the ERB are as follows:

- 1) the multiplier would remain at 2.35%;
- 2) the member contributions would be 8.4% for members earning a salary of \$20,000 or less and 9.9% for members earning more than \$20,000;
- 3) the financial accounting standard would be based on the highest seven consecutive years of a member's salary;
- 4) the years of service requirement for retirement with no benefit reduction would be 35 years;
- 5) the age plus service requirement would be 60 years plus 30 years of earned service credits (no benefits with less than 30 years). The benefit reduction for retirees below the age of 60 plus 30 years service requirement would be 0.6% each quarter year for a retiree under the age of 60. There is no provision for retirement before the age of 60 with fewer than 30 years of earned service credit;
- 6) increase the retirement age to 67 plus five years of earned service credit;
- 7) there would be a "safe harbor" provision for active members who have 22 years of earned service credit as of the effective date of the plan changes; they would be grandfathered to the Tier 1 current requirements; and
- 8) the employer contribution rate would be increased to 13.9% (the amount currently in statute at Section 22-11-21 NMSA 1978).

According to the ERB actuarial results, the proposed changes to the ERB plan would result in a funding ratio of 101.5% in the year 2040. The actuarial analysis was based on a targeted investment return assumption of 7.75%.

Next, Ms. Goodwin spoke to the committee members regarding the ERB's 2011 legislative agenda. She said that the board's solvency plan changes would be finalized at the board's December 10, 2010 meeting, and she asked for the members' support of that solvency plan in its form of a legislative initiative. She then explained that the ERB is also interested in legislation that would provide for the recommendations received from Ennis Knupp last January. Those recommendations include changing the ERB's custody bank, amending the statutory definition of "fiduciary" and providing that ex-officio board members, specifically the state treasurer and the secretary of public education, may appoint designees to represent them at meetings.

Members asked several questions regarding the various legislative proposals that are currently in concept form only. Members stressed that the committee may endorse concepts but needs to see ideas in bill form prior to final endorsement.

Members inquired as to whether Ms. Goodwin had received a letter from the NEA recommending a delay of action on the issue. Ms. Goodwin said she had not seen the letter. However, she noted that as attractive as delaying action on the issue sounds, the most responsible thing is to fund the ERB now in order to avoid more drastic plan changes later. Ms. Goodwin told the members that the ERB actuaries are working on the proposals offered by the NEA. She noted that if those changes can enable the plan to meet the 80% funding ratio in a 30-year period, the board will strongly consider the proposal.

When asked if retirees were polled in the survey conducted by Research & Polling, Ms. Goodwin said they were not because the ERB is not recommending a change to retiree benefits. Members expressed a concern over the ERB's ability to achieve a meeting of the minds concerning potential changes to the plan. Members also asked if the board's decision regarding plan changes must be a unanimous decision. Ms. Goodwin said that the decision must be approved by a majority of board members.

Next, some members expressed concern over the idea of allowing ex-officio board members to send designees to board meetings. Ms. Goodwin commented that an ex-officio member could send a knowledgeable person in that member's place.

Next, members expressed concern that they do not have an actual proposed bill to review. There was a discussion about holding another meeting after the ERB holds its December 10 meeting and makes its final recommendations. Representative Heaton noted that he will seek approval for another meeting for the IOC. Members discussed possible dates for the meeting and agreed upon December 21, 2010, pending approval by the New Mexico Legislative Council.

### **Public Employees Retirement Association (PERA) Recent Investment Performance Outlook for PERA Retirement Fund Solvency and Legislative Proposals**

Terry Slattery, executive director of the PERA, and Joelle B. Mevi, the PERA's chief investment officer, addressed the committee regarding the PERA's fund performance and solvency as well as the PERA's proposed 2011 legislative initiatives.

Ms. Mevi started by directing the members' attention to the PERA fund's investment performance analysis for the month ending September 30, 2010 with a handout prepared by RV Kuhns & Associates. Included in the handout were various charts and graphs current as of September 30, 2010.

The PERA fund had a market value of \$11,066,978,866 as of September 30, 2010. Ms. Mevi continued with a detailed discussion of fund allocation by type of investment and investment managers.

Mr. Slattery provided the members with a handout containing the PERA annual actuarial valuation as of June 30, 2010 as compared to June 30, 2009. The total June 30, 2010 actuarial accrued liability, which included active and deferred vested members, retired members and survivors, is \$15,601,461,460. The June 30, 2009 amount was \$14,908,279,200.

The handout also contains a calculation of the required contributions as a percentage of PERA employee member salaries. The June 30, 2010 statutory contribution percentage rate, which includes the employer contribution percentage rate and the member contribution rate, was 25.06%.

Additionally, the June 30, 2010 statutory contribution percentage rate of 25.06%, less the ongoing day-to-day costs of 20.65%, left 4.41% available to amortize the PERA fund's unfunded liability as of September 30, 2010. The amortization period required to pay the unfunded liability at this contribution rate was infinite, and a contribution increase, therefore, was required.

Mr. Slattery advised the members that the PERA fund consists of three funds: the state general, municipal police and municipal fire funds. According to the PERA board, all of the funds need the same increase in funding, and the board recommends a total of an 8% increase in contributions implemented incrementally at 2% per year, with one-third of the increase paid by employees and two-thirds paid by employers. The board projects that the recommended increase would set the PERA fund on the path to pay off the unfunded liability in the recommended 30-year time frame. When questioned about the board's "ideal plan" provisions, Mr. Slattery said that the plan includes a reduction in benefits for new employees, which will reduce normal costs over time and will help pay down the unfunded liability.

Members asked what the PERA's current funded ratio is. Mr. Slattery responded that it is 78.5%, and he noted that the GASB recommended ratio is 80%. He further noted that the PERA funding ratio reflects being halfway through the 2008 economic downturn with the associated downturn in the market value of the fund.

### **Retirement Systems Solvency Task Force (RSSTF) Recommendations to IOC Regarding Proposed Legislation**

After a break for lunch, the committee was addressed by Raúl E. Burciaga, director of the LCS, regarding potential legislation endorsed by the RSSTF and referred to the IOC for consideration. Mr. Burciaga reminded the members about the legislation that created the RSSTF. He said that the RSSTF spent a great deal of time learning about the concept of pension fund actuarial solvency. He added that the RSSTF entered into a contract with Buck Consultants, an actuarial firm based in Denver, to review and analyze the actuarial soundness of the PERA and the ERB. Mr. Burciaga explained that David Slishinsky and Michelle DeLange of Buck Consultants had presented most of their findings to the RSSTF and would be issuing a final report in a few weeks.

Next, Ms. Faust, assistant director of drafting services for the LCS, apprised the members regarding the legislative proposals endorsed by the RSSTF and forwarded to the IOC for its review.

The first legislative initiative Ms. Faust presented to the committee members was discussion draft number .183068.2, which would delay employer contribution increases for the ERB. The draft provides that the state's contribution rates for the Educational Retirement Fund would be increased gradually beginning on July 1, 2011. The increased contribution rates would start at 11.4% in fiscal year 2012 and incrementally increase yearly, resulting in a rate of 13.4% beginning in fiscal year 2017 and continuing thereafter. With little discussion, there was a motion to endorse the proposed legislation, which was seconded without opposition. Senator Munoz offered to carry the bill.

The next legislative initiative Ms. Faust presented to the committee members was discussion draft number .183087.2, which would capture a portion of the docket and jury fees and deposit them in the state general fund. Additionally, the draft provides that judicial and magistrate retirement benefits would be paid from the general fund. Members expressed concern over the ramifications of the proposed legislation. Although members understood the issues related to the Judicial Retirement Fund, there was no consensus that the proposed legislation was the appropriate fix. A motion was made and seconded to table the proposed legislation; two members opposed it. The motion passed.

The next legislative initiative Ms. Faust presented to the committee members was discussion draft number .183080.2, which would amend the Public Employees Retirement Act to allow retired members to return to work for a state entity on a part-time basis without suspending their retirement benefits, provided that they do not earn more than \$15,000 annually. After a brief discussion regarding some of the potential pitfalls and inquiries as to the motivation for the bill, the proposed legislation failed to receive committee endorsement by a vote of three members for and five members opposed to the proposed legislation.

The next legislative initiative Ms. Faust presented to the committee members was discussion draft number .183084.1, which would provide the statutory framework for the PERA's ideal plan. The ideal plan would change the Public Employees Retirement Act significantly. The provisions of the proposed ideal plan can be found on the PERA web site and in the handouts from previous RSSTF meetings, when the plan was explained in detail. There was a lengthy discussion regarding this proposed legislation. Some members were not yet familiar with the details of the proposed ideal plan. Consequently, there were a number of questions regarding the specifics of the provisions. Members seemed interested in a side-by-side comparison of the existing PERA plan and the proposed ideal plan. After more discussion, the chair suggested that the members review the legislative proposal and bring their ideas and suggestions regarding potential amendments to the proposed December 21, 2010 meeting. The members agreed to revisit the proposed legislation at that time. Prior to ending the discussion, Mr. Slattery cautioned the members that any amendments to the ideal plan would inevitably affect the cost of the plan and the impact on fund solvency.

### **Legislation Proposed by the Attorney General to Include Investment Advisory Services Under the Procurement Code.**

A panel consisting of Assistant Attorney General Phillip Baca, Mr. Jacksha and Ms. Mevi addressed the committee regarding a legislative initiative proposed by the Attorney General's Office (AGO).

Mr. Baca presented the proposed legislation on behalf of the AGO. The proposal, discussion draft number .183038.3SA, would amend the Procurement Code by removing an exemption for certain investment-related contracts, requiring additional procedures for sole source and emergency procurement, restricting who may make an emergency procurement, expanding who may protest a procurement award and increasing penalties for violating the Procurement Code.

Mr. Baca noted that a Procurement Code audit completed in 2008 by the Legislative Finance Committee (LFC) identified areas of concern in the provisions of the code. Specifically noted were abuses related to emergency purchases. The results of the audit identified reforms that are needed to the sole source purchase provisions.

Both the PERA and the ERB opposed the proposed changes to the Procurement Code. Ms. Mevi, referring to a PERA memo presented to the members, told the committee that the legislation being considered for the 2011 session would reverse legislation previously passed.

Ms. Mevi stated that in 2005, the legislature repealed the PERA's legal list of permissible investments and adopted the Uniform Prudent Investor Act (UPIA) for the state's investing agencies. Representative Varela introduced House Bill 387, which exempts from the Procurement Code contracts for investment advisory services, investment management services and investment-related services entered into by the ERB, the PERA and the State Investment Council (SIC).

Ms. Mevi stated further that public pension funds need the flexibility to make prudent investment decisions in a global, complex financial market. Modern pension fund asset allocation models utilize diversification and risk management to steer returns safely to a return target. With a return to the constraints of the Procurement Code, it is less likely that the PERA will be as successful in the future with its investment returns as it has been over the past 10-year period.

Ms. Mevi stated that removing the Procurement Code exemption would cause:

- 1) significant restraints for procuring the types of investments allowable under the UPIA;
- 2) decreased investment returns due to higher fees associated with the limited types of alternative assets procurable under the code;
- 3) additional expense to the fund related to staffing required for receiving, screening, analyzing and filing paper requests for proposals (RFPs) related to the PERA's 120-plus mandates;
- 4) the inability to use internet resources and retain electronic documents related to searches, which are more efficient methods than requiring hard copy; and
- 5) the fund to incur substantially more risk by restricting the types and quantity of alternative assets in the assets allocation model.

Mr. Jacksha spoke on behalf of the ERB. Referring to a letter from Ms. Goodwin, dated November 30, 2010 and sent to the IOC members, Mr. Jacksha said that if this bill is passed, it would severely hamper the continued implementation of several successful ERB investment programs, including private equity, real estate, infrastructure and natural resources. He stated that it would be impossible to continue these current programs if the ERB were required to issue RFPs for the selection managers. He said that a prime example of success in these programs is private equity, which has made significant contributions to investment performance with a return of 24% in the last 12 months. Mr. Jacksha explained that this return has been a result of the current process, which has allowed the ERB to take advantage of unique opportunities available in the marketplace. He also stated that this flexibility would not exist under an RFP process, which would result in mediocre returns at best.

After a lengthy discussion regarding the proposed legislation, members asked if the parties could work together with the LFC staff to achieve a workable solution for the proposed legislation. Representative Heaton asked if they could try to work something out by the December 21, 2010 meeting. The parties agreed.

Next, the committee was addressed by Senator Keller, who presented several bills for the committee's endorsement consideration. The first proposed legislation was discussion draft number .182843.2, which would remove the governor as a member of the SIC. The proposed legislation was passed by a vote of three members for and two opposed. Senator Keller will carry the bill.

The next proposed legislation presented by Senator Keller was discussion draft number .182846.1, which provides changes to the board membership of the Small Business Investment Corporation. A motion was made to endorse the bill; it was seconded, and the motion passed without opposition.

The next proposed legislation presented by Senator Keller was discussion draft number .183394.1, which would expand the duties of the Private Equity Investment Advisory Committee to include reviewing and making recommendations to the IOC on economically targeted investments. A motion was made to endorse the bill, and it was seconded. The motion passed with one member opposed.

The next proposed legislation presented by Senator Keller was discussion draft number .182842.1SA, which would amend the New Mexico Uniform Securities Act to allow for enforcement by the attorney general and to increase the statute of limitations. The bill would also amend the definition of "fraud". Senator Keller advised the members that this legislation is drafted to mirror the State of New York's "Martin Act". The members have heard testimony on this issue before, and, after brief discussion, a motion to endorse the bill was made and seconded, and it passed without opposition.

The next proposed legislation presented by Senator Keller was discussion draft number .182844.3, which would change the makeup of the PERA and the ERB boards. Senator Keller noted that he realized that there were significant problems with the proposed legislation as currently drafted, and he withdrew the bill. Representative Heaton asked Senator Keller if he could work on the legislation for the December 21, 2010 committee meeting. Senator Keller replied that he could.

### **SIC — Recent Investment Performance and Proposed Legislation**

Mr. Smith provided the members with information regarding the SIC's investments. The SIC's investment summary for the quarter ending September 30, 2010 includes the following: the permanent funds performance was 8.5% for the Land Grant Permanent Funds (LGPF) and 9% for the Severance Tax Permanent Fund (STPF). The LGPF matched its 8.5% benchmark, and the STPF outperformed its benchmark by 0.9%. The funds materially outperformed the peer group median return of 6.8%. For the year ending September 30, 2010, the LGPF returned 12.6%, 0.8% ahead of the policy benchmark, and ranked in the eleventh percentile of peer funds. The STPF returned 12.8% for the year, 1.3% ahead of its policy benchmark, and ranked in the tenth percentile relative to peers. Total assets under management in the LGPF came to \$9.5 billion, up from \$8.8 billion at the beginning of the quarter. Assets under management in the STPF totaled \$3.6 billion, up from \$3.4 billion at the start of the quarter. Total assets under management by the SIC at the end of the September quarter came to \$13.8 billion.

Performance for the quarter and over the last year has been driven by the funds' exposure to the publicly traded equity markets. The rebound in stocks underway since the first quarter of 2009 has driven both absolute and relative performance of the LGPF and the STPF.

Relative to the peer group used for performance comparisons, SIC-managed portfolios historically maintain high exposures to publicly-traded equity.

The strong performance of the equity markets, particularly over the last quarter, has moved the actual allocations of the LGPF and the STPF away from the target allocations to publicly traded equity. This is particularly pronounced in the STPF. Staff is working on plans to rebalance these portfolios back toward the target allocations.

The strength of the financial markets since the first quarter of 2009 continues to increase the value of both the LGPF and the STPF.

Next, Steve Moise, state investment officer, SIC, advised the members regarding the SIC's proposed legislative initiatives. He said that the SIC staff has sought and received input and approval for the proposed legislation from both its government committees and the full council. Mr. Moise told the members that the SIC proposes the following statutory revisions for consideration in the upcoming session:

1) Discussion draft number .183454.1SA, relating to contingency fees: this revision would change the SIC statute to allow the council to enter into contingent fee legal services contracts in pursuit of investment recoveries, authorized under appropriate RFP policies. This limits the potential legal fee expenditure by the SIC while optimizing recovery abilities. There was a motion to endorse the legislation, which was seconded. The motion passed without opposition. Mr. Jacksha noted that similar legislation would be valuable for the ERB, and he was asked by members to provide a bill at the December 21, 2010 meeting.

2) Discussion draft number .182964.1SA, relating to board removal: this revision would remove the statutory requirement that the state investment officer serve on the New Mexico Finance Authority, the New Mexico Renewable Energy Transmission Authority and the education trust boards. It would allow the SIC to focus on the primary goal of growing the permanent fund. The bill was unanimously endorsed after a motion and a second. Senator Sapien will carry the bill.

3) Discussion draft number .182967.1SA, relating to tobacco: this revision would adjust the current statutory language that requires the Tobacco Settlement Permanent Fund to be invested "as land grant permanent funds". Mr. Moise explained that this language is problematic because it is not appropriate for the tobacco fund to be invested in long-term horizon investments like private equity, real estate and other alternatives, especially because the tobacco fund is a reserve fund for the legislature. This bill would remove the requirement but keep constitutional investment limitations of the LGPF on this fund. The bill was unanimously endorsed by the members and will be carried by Representative Varela.

4) Discussion draft number .183103.1SA, relating to water: this revision deals with the same issue as the tobacco legislation. It would clean up existing statutory language, keeping LGPF investment limitations and removing the requirement that it mirror the LGPF in alternative investments. The bill was unanimously endorsed by the members and will be carried by Representative Larrañaga.

5) Discussion draft number .182968.1SA, relating to a constitutional amendment: this revision requests removal of the constitutional cap of 15% on international equity investments,

which is not in line with modern investment theory. According to Mr. Moise, a cap should ideally be set by the council through policy rather than by the constitution. The bill also increases the constitutional standard of care from ordinary prudence to the UPIA, in line with the statute. If passed, it will still require a statewide referendum. The bill was unanimously endorsed by the members and will be carried by Senator Keller.

6) Discussion draft number .183237.1SA, relating to portfolio management: the current SIC policy allows investment of portfolios by finance students at UNM and New Mexico State University, under specific faculty and SIC oversight and supervision, as part of a teaching tool. This revision seeks to formalize this structure in statute. The bill was tabled by the committee. There was a motion to send a letter to the SIC stating that, after review, the committee finds that funding the program with state money is an inappropriate use of state funds and that it is the hope of the committee that such state funding will cease. The motion passed.

7) Discussion draft number .182963.1SA, relating to the IOC governing statute cleanup: this revision would provide changes to last year's SB 18 to include allowing the SIC to elect a chair and vice chair. The revision will allow contingent attorney fees. It will extend financial reporting to 30 days from an unrealistic 10 days. It will allow commercial liability insurance coverage for the council as well as Tort Claims Act coverage for the SIC members. The bill was tabled by the committee by virtue of a unanimous vote, with a request that a modified version of the bill be presented at the December 21, 2010 meeting.

#### **Other Retirement Fund Solvency Legislation Proposed for IOC Endorsement**

Representative Heaton advised the members that he would like to propose several pieces of legislation, including a bill that would amend the COLA for the PERA and a bill that would prohibit municipalities and the Department of Public Safety from making any percentage of an employee's contribution to the respective retirement fund. Representative Heaton noted that the bill would apply specifically to future contracts and not to existing contracts. The committee deferred further discussion of legislative proposals to the meeting requested for December 21, 2010, and the meeting was adjourned at 5:45 p.m.

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

**December 21, 2010  
Room 322, State Capitol  
Santa Fe**

The fifth meeting of the Investments Oversight Committee (IOC) for the 2010 interim was called to order by Representative John A. Heaton, chair, on Tuesday, December 21, 2010, at 9:15 a.m. at the State Capitol in Santa Fe.

**Present**

Rep. John A. Heaton, Chair  
Sen. George K. Munoz, Vice Chair  
Rep. Larry A. Larrañaga  
Sen. Carroll H. Leavell  
Sen. Steven P. Neville  
Rep. Henry Kiki Saavedra  
Sen. John M. Sapien  
Rep. Jim R. Trujillo  
Rep. Luciano "Lucky" Varela

**Advisory Members**

Sen. Carlos R. Cisneros  
Rep. Miguel P. Garcia  
Sen. Mary Kay Papan  
Rep. Jane E. Powdrell-Culbert  
Sen. John Arthur Smith  
Rep. Sheryl Williams Stapleton  
Rep. Richard D. Vigil

**Guest Legislator**

Rep. Mimi Stewart

**Staff**

Tom Pollard, Legislative Council Service (LCS)  
Doris Faust, LCS

**Guests**

The guest list is located in the meeting file.

**Handouts**

Handouts and written testimony are in the meeting file.

**Absent**

Rep. Donald E. Bratton  
Sen. Tim Eichenberg  
Sen. Timothy M. Keller

Rep. Andrew J. Barreras  
Rep. Roberto "Bobby" J. Gonzales  
Sen. Stuart Ingle  
Rep. Patricia A. Lundstrom  
Sen. William H. Payne  
Sen. John C. Ryan  
Sen. Michael S. Sanchez  
Rep. Shirley A. Tyler  
Sen. Peter Wirth

**Note: These minutes should be considered to be in draft form. Since this was the last meeting of the interim, the IOC has not had the opportunity to consider these minutes for approval.**

**Tuesday, December 21**

Representative Heaton opened the meeting with remarks about the challenges facing legislatures around the country with regard to the solvency of public employee pension funds.

**Educational Retirement Board (ERB): Retirement Plan Revision Proposal and Implications for Retirement Fund Solvency**

Jan Goodwin, executive director, ERB, and Russell Goff, ERB board member, appeared before the committee to present the first item on the agenda. Ms. Goodwin began by stating that the ERB is not unique; most public pension funds are challenged, and in 2010, 18 states have amended statutes governing their funds. The problems facing pension funds can be attributed primarily to two capital market meltdowns during the last decade, which have driven down the market value of pension fund investments.

Ms. Goodwin reviewed her previous presentation to the IOC at its December 1 meeting. The ERB pension program has a \$4.9 billion unfunded actuarial accrued liability and is 65.7% funded, given current actuarially valued assets and liabilities. The ERB's goals are to achieve 80% funded status within 30 years and to have New Mexico remain competitive in the region to attract and retain qualified employees.

Ms. Goodwin said that in developing its final recommendation, the ERB solicited and received a lot of public comment. The final proposal, approved unanimously by the ERB, is for member employee contribution rates to increase by 0.5%, spread over four years, from their current level and for employer contribution rates to increase to 13.9%, spread over six years. A bill is currently being drafted to reflect these increases in contribution percentages.

Representative Stewart asked Ms. Goodwin to clarify whether the 1.5% "swap" from the employer to the employee contribution would continue as part of the proposal, in which case the increase would be 2% rather than just 0.5% relative to current law for those employees making greater than \$20,000 per year. Representative Stewart suggested that the board might consider a two-year extension of the swap together with the 0.5% employee contribution increase.

Representative Heaton initiated a discussion among committee members of whether or not the swap will be permanent. Ms. Goodwin reiterated that the employer contribution would eventually be 13.9% for all employees and that the employee portion would go up 0.5% per year for four years from its current level, which includes a 1.5% swap, or increase in the employee contribution rate and decrease in employer contribution rate, for employees making more than \$20,000 per year.

Senator Smith expressed concern that this legislation, if it passes, will be seen as solving the problem when the solution is only temporary, given the structural problems facing the retirement plan.

The committee discussed the need not only for an increase in contribution rates, but for a review of the entire retirement plan, including the cost-of-living adjustment (COLA) for retirees, investment return assumptions and the ERB's earlier recommendation to require employees to work longer before being eligible for retirement.

Representative Heaton summarized the proposal as follows: increase employee contributions by a 0.5% spread over four years from current levels, bringing contribution rates to 9.9% for employees making more than \$20,000 per year and 8.4% for employees making \$20,000 or less per year and for the state's contribution to increase to 13.9% spread over six years for both employee salary groups.

A motion was made and seconded to endorse the proposal in concept. The motion was approved. Senator Leavell opposed the motion.

### **Public Employees Retirement Association (PERA): Proposed Legislation and Implications for Retirement Fund**

Terry Slattery, executive director, PERA, advised the members that the PERA board is proposing to increase the contribution rate to the state general, municipal police and municipal fire retirement funds. According to the PERA board, all three funds need the same increase in funding, and the board recommends a total 8% increase in contributions, implemented incrementally at 2% per year with one-third of the increase being paid by employees and two-thirds being paid by employers. The board projects that the recommended increase would set the PERA fund on the path to pay off the unfunded liability in the recommended 30-year time frame.

Mr. Slattery reviewed discussion draft number .183673.1SA, which increases, relative to current law, the contribution by 2% per year for four years, for a total of 8%, for the three retirement plans. The proposal would have one-third of the increase paid by the employee and two-thirds of the increase paid by the employer.

Committee members discussed the cost to the general fund of this bill, the age of retirement of PERA members and whether the municipal general plan should be added to the bill.

A motion was made by Representative Saavedra and seconded by Representative Vigil to endorse the draft as written. The motion passed with Senator Leavell voting against approval of the motion. Senator Munoz was selected to carry the bill.

Mr. Slattery described discussion draft number .183713.1SA, which increases employer and employee contribution rates for the judicial and magistrate retirement plans. The bill does not deal with the dedication of docket fees to these retirement plans.

The committee discussed judicial and magistrate retirement fund solvency and the need for further reforms in lieu of further contribution increases.

A motion to endorse the bill was made and seconded and passed with Senator Leavell voting against the motion. Senator Munoz was selected to carry the bill.

Mr. Slattery summarized discussion draft number .183674.1SA, which would authorize the PERA board to select a custodian bank, rather than have the selection performed by the State

Board of Finance as is now the case, and to hire attorneys on a contingent fee basis rather than on a fee-for-service basis, as is now the requirement.

The committee discussed the merits of this bill and the fact that the State Investment Council (SIC) is requesting similar authority.

A motion to endorse the bill was made and seconded and passed without opposition. Representative Trujillo was selected to carry the bill.

### **SIC: Proposed Legislation**

Steve Moise, state investment officer, SIC, presented discussion draft number .182963.5SA, which would amend the powers and duties of the SIC to provide for the election of the chair and vice chair of the council, to authorize the SIC to contract for legal services on a contingent fee basis and to make other technical amendments to SIC statutes.

The committee discussed the makeup of the SIC and who appoints members under current law.

A motion to endorse the bill was made and seconded and passed without opposition.

### **Other Legislation Proposed for IOC Endorsement**

Representative Heaton presented discussion draft number .183377.1, which would amend the Public Employees Retirement Act to change the COLA for pensions from a flat 3% per year to an annual adjustment equal to three-fourths of the percentage increase in the Consumer Price Index, but with a cap in the annual COLA at 3% and a floor at 0%.

The committee discussed other structural changes that may be required, including a minimum retirement age, a lower years-of-service multiplier to determine pension amount and a longer period over which to average salary in determining pension benefits.

A motion to endorse the bill was made and seconded and passed without opposition. Senator Smith was selected to carry the bill.

Representative Heaton presented discussion draft number .183378, which would amend the Public Employees Retirement Act to require municipal employees to make the employee portion of the contribution to their retirement plan.

The committee discussed the implications of the current situation in which municipalities are in many cases paying not only the employer share, but also some or all of the employee share. A motion to endorse the bill was made and seconded and passed without opposition. Senator Leavell was selected to carry the bill.

For discussion purposes only, Representative Stewart presented discussion draft number .183704.1, which would amend the Educational Retirement Act to delay employer contribution increases and extend increases in employee contributions to the Educational Retirement Fund.

Representative Stewart also presented for discussion purposes only discussion draft number .183706.1, which would amend the Public Employees Retirement Act to extend through

fiscal year 2013 a swap currently in place whereby the employee contribution rate for PERA members with annual salaries greater than \$20,000 is temporarily increased by 1.5% and the employer contribution rate for these employees is reduced by a corresponding amount.

The fiscal implications of these bills were discussed. Representative Stewart asked that no action be taken on either bill.

Representative Stewart discussed the need for a bill to impose a minimum retirement age for ERB and PERA member employees. She noted that approximately one-third of PERA and ERB employee members retire before age 55 and that around one-third of the cost of these retirement plans comes from their generous COLAs that become effective upon retirement. She stated that there is a bill being drafted that would impose a minimum retirement age of 55 on all non-uniformed employees only. The bill would not affect uniformed employees or any PERA and ERB member employees currently eligible for retirement, but it would affect all other ERB and PERA members.

Representative Heaton suggested a bill for a minimum retirement age of 55 for all but uniformed employees, who would have a minimum retirement age of 50. Senator Smith recommended looking at changing the multiplier to encourage members to work longer.

Senator Neville questioned the issue of whether the bills affect property rights of current employees. Representative Heaton urged the legislators to do what is responsible with regard to fund solvency and let the property rights issues be decided in the courts.

A motion to support Representative Stewart's idea for a minimum retirement age for all but uniformed employees was made and seconded and passed without opposition.

There being no further business, the meeting adjourned at 12:45 p.m.

**LEGISLATION ENDORSED BY THE COMMITTEE**

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BILL

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO EDUCATIONAL RETIREMENT; DELAYING EMPLOYER  
CONTRIBUTION INCREASES FOR EDUCATIONAL RETIREMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 22-11-21 NMSA 1978 (being Laws 1967,  
Chapter 16, Section 144, as amended) is amended to read:

"22-11-21. CONTRIBUTIONS--MEMBERS--LOCAL ADMINISTRATIVE  
UNITS.--

A. Except as provided in Subsection C of this  
section, each member shall make contributions to the fund  
according to the following schedule:

(1) through June 30, 2005, an amount equal to  
seven and six-tenths percent of the member's annual salary;

(2) from July 1, 2005 through June 30, 2006,  
an amount equal to seven and six hundred seventy-five

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1 thousandths percent of the member's annual salary;

2 (3) from July 1, 2006 through June 30, 2007,  
3 an amount equal to seven and seventy-five hundredths percent of  
4 the member's annual salary;

5 (4) from July 1, 2007 through June 30, 2008,  
6 an amount equal to seven and eight hundred twenty-five  
7 thousandths percent of the member's annual salary; and

8 (5) on and after July 1, 2008, an amount equal  
9 to seven and nine-tenths percent of the member's annual salary,  
10 except that from July 1, 2009 through June 30, 2011, for  
11 members whose annual salary is greater than twenty thousand  
12 dollars (\$20,000), the member contribution rate shall be nine  
13 and four-tenths percent of the member's annual salary.

14 B. Except as provided in Subsection C of this  
15 section, each local administrative unit shall make an annual  
16 contribution to the fund according to the following schedule:

17 (1) through June 30, 2005, a sum equal to  
18 eight and sixty-five hundredths percent of the annual salary of  
19 each member employed by the local administrative unit;

20 (2) from July 1, 2005 through June 30, 2006, a  
21 sum equal to nine and forty-hundredths percent of the annual  
22 salary of each member employed by the local administrative  
23 unit;

24 (3) from July 1, 2006 through June 30, 2007, a  
25 sum equal to ten and fifteen-hundredths percent of the annual

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1 salary of each member employed by the local administrative  
2 unit;

3 (4) from July 1, 2007 through June 30, 2008, a  
4 sum equal to ten and ninety-hundredths percent of the annual  
5 salary of each member employed by the local administrative  
6 unit;

7 (5) from July 1, 2008 through June 30, 2009, a  
8 sum equal to eleven and sixty-five hundredths percent of the  
9 annual salary of each member employed by the local  
10 administrative unit;

11 (6) from July 1, 2009 through June 30, 2011, a  
12 sum equal to ten and nine-tenths percent of the annual salary  
13 of each member employed by the local administrative unit,  
14 except that for members whose annual salary is twenty thousand  
15 dollars (\$20,000) or less, the local administrative unit shall  
16 contribute twelve and four-tenths percent of the member's  
17 annual salary;

18 (7) from July 1, 2011 through June 30, 2012, a  
19 sum equal to [~~thirteen and fifteen-hundredths~~] eleven and four-  
20 tenths percent of the annual salary of each member employed by  
21 the local administrative unit; [~~and~~]

22 (8) from July 1, 2012 through June 30, 2013, a  
23 sum equal to eleven and four-tenths percent of the annual  
24 salary of each member employed by the local administrative  
25 unit;

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1                   (9) from July 1, 2013 through June 30, 2014, a  
2 sum equal to eleven and nine-tenths percent of the annual  
3 salary of each member employed by the local administrative  
4 unit;

5                   (10) from July 1, 2014 through June 30, 2015,  
6 a sum equal to twelve and four-tenths percent of the annual  
7 salary of each member employed by the local administrative  
8 unit;

9                   (11) from July 1, 2015 through June 30, 2016,  
10 a sum equal to twelve and nine-tenths percent of the annual  
11 salary of each member employed by the local administrative  
12 unit;

13                   (12) from July 1, 2016 through June 30, 2017,  
14 a sum equal to thirteen and four-tenths percent of the annual  
15 salary of each member employed by the local administrative  
16 unit; and

17                   ~~(8)~~ (13) on and after July 1, ~~2012~~ 2017, a  
18 sum equal to thirteen and nine-tenths percent of the annual  
19 salary of each member employed by the local administrative  
20 unit.

21                   C. If, in a calendar year, the salary of a member,  
22 initially employed by a local administrative unit on or after  
23 July 1, 1996, equals the annual compensation limit set pursuant  
24 to Section 401(a)(17) of the Internal Revenue Code of 1986, as  
25 amended, then:

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1 (1) for the remainder of that calendar year,  
2 no additional member contributions or local administrative unit  
3 contributions for that member shall be made pursuant to this  
4 section; provided that no member shall be denied service credit  
5 solely because contributions are not made by the member or on  
6 behalf of the member pursuant to the provisions of this  
7 subsection; and

8 (2) the amount of the annual compensation  
9 limit shall be divided into four equal portions, and, for  
10 purposes of attributing contributory employment and crediting  
11 service credit, each portion shall be attributable to one of  
12 the four quarters of the calendar year."

13 **SECTION 2. EFFECTIVE DATE.**--The effective date of the  
14 provisions of this act is July 1, 2011.

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SENATE BILL

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

FOR THE INVESTMENTS OVERSIGHT COMMITTEE

AN ACT

RELATING TO PUBLIC FINANCE; REMOVING THE GOVERNOR FROM THE  
STATE INVESTMENT COUNCIL.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 6-8-2 NMSA 1978 (being Laws 1957,  
Chapter 179, Section 2, as amended) is amended to read:

"6-8-2. STATE INVESTMENT COUNCIL.--

A. There is created a "state investment council".

The council shall be composed of:

~~[(1) the governor;~~

~~(2)]~~ (1) the state treasurer;

~~[(3)]~~ (2) the commissioner of public lands;

~~[(4)]~~ (3) the secretary;

~~[(5)]~~ (4) the chief financial officer of a

state institution of higher education appointed by the governor

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1 with the advice and consent of the senate;

2 [~~(6)~~] (5) four members appointed by the New  
3 Mexico legislative council with the advice and consent of the  
4 senate; provided that no more than two members shall be members  
5 of the same political party; and

6 [~~(7)~~] (6) two members appointed by the  
7 governor with the advice and consent of the senate.

8 B. The chair [~~of the council shall be the governor~~]  
9 and the vice chair of the council shall be selected by the  
10 council from among the members appointed pursuant to Paragraphs  
11 (5) and (6) of Subsection A of this section. All actions of  
12 the council shall be by majority vote, and a majority of the  
13 members shall constitute a quorum.

14 C. Members of the council appointed pursuant to  
15 Paragraphs (5) and (6) [~~and (7)~~] of Subsection A of this  
16 section shall be reimbursed per diem and mileage pursuant to  
17 the provisions of the Per Diem and Mileage Act."

18 SECTION 2. Section 6-8-3 NMSA 1978 (being Laws 1957,  
19 Chapter 179, Section 3, as amended) is amended to read:

20 "6-8-3. COUNCIL TERMS AND QUALIFICATIONS.--

21 A. Members of the council appointed pursuant to  
22 Paragraphs (5) and (6) [~~and (7)~~] of Subsection A of Section  
23 6-8-2 NMSA 1978, with the advice and consent of the senate,  
24 shall serve for staggered terms of five years. Members of the  
25 council shall serve until their successors are appointed and

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1 have qualified.

2 B. The members of the council appointed pursuant to  
3 Paragraphs (5) and (6) [~~and (7)~~] of Subsection A of Section  
4 6-8-2 NMSA 1978 shall be qualified by competence and no less  
5 than ten years experience in the field of investment or  
6 finance. A member of the council shall not have had any  
7 contracts to do business with the state investment council, the  
8 investment office, the office of the state treasurer, the  
9 educational retirement board, the public employees retirement  
10 association, the New Mexico finance authority or the state  
11 board of finance for a period of two calendar years prior to  
12 the person's appointment to the council and shall not enter  
13 into any contracts to do business with any of the named state  
14 agencies or instrumentalities for a period of two calendar  
15 years after the end of the term for which the member was  
16 appointed. Members of the council and officers and employees  
17 of the council shall be governed by the provisions of the  
18 Governmental Conduct Act. Nothing in this section or in the  
19 Governmental Conduct Act shall be construed as prohibiting an  
20 officer of a financial institution from participating as a  
21 member of the council in setting general policies of the  
22 council, nor shall any provision of the Governmental Conduct  
23 Act prohibit the council or the state treasurer from depositing  
24 funds under the jurisdiction of the council in any financial  
25 institution. A council member shall not hold an office or

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1 employment in a political party.

2 C. The member appointed pursuant to Paragraph [~~(5)~~]  
3 (4) of Subsection A of Section 6-8-2 NMSA 1978 shall serve at  
4 the pleasure of the governor. A member of the council  
5 appointed pursuant to Paragraphs (5) and (6) [~~and (7)~~] of  
6 Subsection A of Section 6-8-2 NMSA 1978 may be removed from the  
7 council by the appointing person or entity, for failure to  
8 attend three consecutive meetings or other cause, in the manner  
9 provided for removal of members of boards of regents under  
10 Article 12, Section 13 of the constitution of New Mexico. A  
11 vacancy in the membership of the council occurring other than  
12 by expiration of term shall be filled in the same manner as the  
13 original appointment but for the unexpired term only."

14 SECTION 3. EFFECTIVE DATE.--The effective date of the  
15 provisions of this act is July 1, 2011.

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SENATE BILL

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

FOR THE INVESTMENTS OVERSIGHT COMMITTEE

AN ACT

RELATING TO THE SMALL BUSINESS INVESTMENT CORPORATION; CHANGING  
THE MEMBERSHIP OF THE SMALL BUSINESS INVESTMENT CORPORATION  
BOARD OF DIRECTORS; AMENDING REPORTING REQUIREMENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 58-29-5 NMSA 1978 (being Laws 2000,  
Chapter 97, Section 7, as amended) is amended to read:

"58-29-5. CORPORATION BOARD OF DIRECTORS--APPOINTMENT--  
POWERS.--

A. The corporation shall be governed by the board.  
The corporation's board of directors shall consist of:

(1) the state treasurer or [~~his~~] the state  
treasurer's designee;

(2) the state investment officer or [~~his~~] the  
state investment officer's designee;

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1 (3) [~~six~~] three members appointed by the  
2 governor, with the advice and consent of the senate, for a term  
3 of five years, who shall serve at the pleasure of the governor;  
4 and

5 (4) three members appointed by the New Mexico  
6 legislative council, with the advice and consent of the senate,  
7 for a term of five years; provided that no more than two  
8 members shall be members of the same political party.

9 B. Each [~~director~~] member shall hold office for the  
10 length of [~~his~~] the member's term in office or until a  
11 successor is appointed or elected and begins service on the  
12 board.

13 [~~G. The governor shall appoint, with the consent of~~  
14 ~~the senate, the six public directors of the board who shall~~  
15 ~~serve at the pleasure of the governor.]~~

16 [~~D.~~] C. The governor's and the New Mexico  
17 legislative council's appointees to the board shall be public  
18 members who have general expertise in small business  
19 management, but they shall not be employed by or represent  
20 small businesses receiving equity investments from the  
21 corporation.

22 [~~E.~~] D. No two members of the board shall be  
23 employed by or represent the same company or institution.

24 [~~F.~~] E. The board shall annually elect a [~~chairman~~]  
25 chair from among its members and shall elect those other

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1 officers that it determines are necessary for the performance  
2 of its duties.

3 [G.] F. The power to set the policies and  
4 procedures for the corporation is vested in the board. The  
5 board may perform all acts necessary or appropriate to exercise  
6 that power.

7 [H.] G. Public members of the board shall be  
8 reimbursed for attending meetings of the board as provided in  
9 the Per Diem and Mileage Act and shall receive no other  
10 compensation, perquisite or allowance.

11 [I.] H. Public members of the board are appointed  
12 public officials of the state while carrying out their duties  
13 and activities under the Small Business Investment Act. The  
14 directors and the employees of the corporation are not liable  
15 personally, either jointly or severally, for any debt or  
16 obligation created or incurred by the corporation or for any  
17 act performed or obligation entered into in an official  
18 capacity when done in good faith, without intent to defraud and  
19 in connection with the administration, management or conduct of  
20 the corporation or affairs relating to it.

21 [J.] I. The board shall conduct an annual audit of  
22 the books of accounts, funds and securities of the corporation  
23 to be made by a competent and independent firm of certified  
24 public accountants. A copy of the audit report shall be filed  
25 with the president and posted on the corporation's web site.

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1 The audit shall be open to the public for inspection."

2 SECTION 2. Section 58-29-6 NMSA 1978 (being Laws 2000,  
3 Chapter 97, Section 8, as amended) is amended to read:

4 "58-29-6. PRESIDENT--POWERS AND DUTIES.--

5 A. The board shall select a president of the  
6 corporation from among its members. The corporation is under  
7 the administrative control of the president or a person  
8 selected by the board to administer the operations of the  
9 corporation. The board shall periodically review and appraise  
10 the investment strategy being followed, and the president shall  
11 report at least once a month to the board on investment results  
12 and related matters. The president shall:

13 (1) act for the corporation in collecting and  
14 disbursing money necessary to administer the corporation and  
15 conduct its business;

16 (2) sign contracts and incur obligations on  
17 behalf of the corporation;

18 (3) perform all acts necessary to exercise  
19 power, authority or jurisdiction over the corporation to  
20 discharge its functions and fulfill its responsibilities; and

21 (4) make investments pursuant to the Small  
22 Business Investment Act and upon approval of the board.

23 B. The president shall submit an annual report,  
24 independently audited in accordance with generally accepted  
25 procedures governing annual reports, by October 1 of each year

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1 to the governor, the legislative finance committee and any  
2 other appropriate legislative committee indicating the business  
3 done by the corporation during the previously completed fiscal  
4 year and containing a statement of the resources and  
5 liabilities of the corporation. The report shall be posted on  
6 the corporation's web site and shall include:

7 (1) the average rate of return enjoyed by the  
8 corporation on invested assets;

9 (2) recommendations concerning desired changes  
10 in the corporation to promote its prompt and efficient  
11 administration of policies and claims;

12 (3) recommendations to the legislature and the  
13 governor regarding the continued operation of the corporation;  
14 and

15 (4) any other information the president deems  
16 appropriate."

17 **SECTION 3. TEMPORARY PROVISIONS--TRANSITION MEMBERSHIP**  
18 **OF THE SMALL BUSINESS INVESTMENT CORPORATION BOARD OF**  
19 **DIRECTORS.--**

20 A. Within thirty days of July 1, 2011, three  
21 members shall be appointed to the small business investment  
22 corporation board of directors as successors to current public  
23 board members by the New Mexico legislative council pursuant to  
24 Paragraph (4) of Subsection A of Section 1 of this act and  
25 shall serve on an interim basis until confirmed by the senate.

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1           B. Within thirty days of July 1, 2011, three  
2 members shall be appointed to the small business investment  
3 corporation board of directors as successors to current public  
4 board members by the governor pursuant to Paragraph (3) of  
5 Subsection A of Section 1 of this act and shall serve on an  
6 interim basis until confirmed by the senate.

7           C. The three members appointed pursuant to  
8 Subsection A of this section and the three members appointed  
9 pursuant to Subsection B of this section shall, by lot,  
10 determine the initial terms of office for each position so  
11 that one position will be for a term of one year, one position  
12 will be for a term of two years, two positions will be for  
13 terms of three years, one position will be for a term of four  
14 years and one position will be for a term of five years.  
15 Thereafter, the terms of members shall be for five years.

16           **SECTION 4. EFFECTIVE DATE.**--The effective date of the  
17 provisions of this act is July 1, 2011.

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SENATE BILL

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

FOR THE INVESTMENTS OVERSIGHT COMMITTEE

AN ACT

RELATING TO PUBLIC FINANCES; AMENDING DUTIES OF THE PRIVATE  
EQUITY INVESTMENT ADVISORY COMMITTEE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 6-8-20 NMSA 1978 (being Laws 1987,  
Chapter 219, Section 3, as amended) is amended to read:

"6-8-20. PRIVATE EQUITY INVESTMENT ADVISORY COMMITTEE  
CREATED--MEMBERSHIP--DUTIES--TERMS--LIABILITIES--CONFLICT OF  
INTEREST.--

A. There is created the "private equity investment  
advisory committee" to the council. The committee consists of  
the state investment officer, a member of the council appointed  
by the council and three members who are qualified by  
competence and experience in finance and investment and  
knowledgeable about the private equity investment process and

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1 who are appointed by the council.

2 B. Members appointed by the council, except the  
3 council member, shall be appointed for three-year terms;  
4 provided that the terms of the initial committee members shall  
5 be staggered so that the term of one member expires each year.  
6 After the initial appointments, all appointed members shall be  
7 appointed for three-year terms. Members shall serve until  
8 their successors are appointed. A vacancy occurring other than  
9 by expiration of term shall be filled in the same manner as the  
10 original appointment, but only for the unexpired term.

11 C. The committee shall review and make  
12 recommendations to the council on investments authorized  
13 pursuant to Sections 7-27-5.15 and 7-27-5.26 NMSA 1978 and all  
14 other private equity investments and shall advise the council  
15 in matters and policies related to such investments. The  
16 committee shall establish policies for national private equity  
17 fund investments, New Mexico private equity fund investments  
18 and New Mexico film private equity fund investments not less  
19 often than annually and shall make copies available to  
20 interested parties.

21 D. The committee shall review and make  
22 recommendations to the council on economically targeted  
23 investments, and the council shall not make an economically  
24 targeted investment until the investment has been reviewed and  
25 approved by the committee. The committee shall identify

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1 performance measures and for each economically targeted  
2 investment made by the council shall track:

3 (1) the impact of the investment on the  
4 economy;

5 (2) the return on investment of the  
6 investment;

7 (3) the number of jobs created as a result of  
8 the investment; and

9 (4) other economic impacts of the investment.

10 ~~[D-]~~ E. Members of the committee shall receive per  
11 diem and mileage as provided for nonsalaried public officers in  
12 the Per Diem and Mileage Act and shall receive no other  
13 compensation, perquisite or allowance.

14 ~~[E-]~~ F. The committee shall elect annually a chair  
15 from among its members and may elect other officers as  
16 necessary. The committee shall meet upon the call of the chair  
17 or the state investment officer.

18 ~~[F-]~~ G. Members of the committee are public  
19 employees within the meaning of the Tort Claims Act and are  
20 entitled to all immunity and indemnification provided under  
21 that act.

22 ~~[G-]~~ H. A person shall not be a member of the  
23 committee if any recommendation, action or decision of the  
24 committee will or is likely to result in direct, measurable  
25 economic gain to that person or that person's employer.

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SENATE BILL

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

FOR THE INVESTMENTS OVERSIGHT COMMITTEE

AN ACT

RELATING TO SECURITIES; AMENDING THE NEW MEXICO UNIFORM  
SECURITIES ACT TO ALLOW FOR ENFORCEMENT BY THE ATTORNEY GENERAL  
AND TO INCREASE THE STATUTE OF LIMITATIONS; EXPANDING THE  
DEFINITION OF "FRAUD".

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** Section 58-13C-101 NMSA 1978 (being Laws 2009,  
Chapter 82, Section 101) is amended to read:

"58-13C-101. SHORT TITLE.--~~[Sections 101 through 701 of  
this act]~~ Chapter 58, Article 13C NMSA 1978 may be cited as the  
"New Mexico Uniform Securities Act"."

**SECTION 2.** Section 58-13C-102 NMSA 1978 (being Laws 2009,  
Chapter 82, Section 102) is amended to read:

"58-13C-102. DEFINITIONS.--As used in the New Mexico  
Uniform Securities Act, unless the context otherwise requires:

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underscoring material = new  
~~[bracketed material]~~ = delete

1           A. "agent" means an individual, other than a  
2 broker-dealer, who represents a broker-dealer in effecting or  
3 attempting to effect purchases or sales of securities or  
4 represents an issuer in effecting or attempting to effect  
5 purchases or sales of the issuer's securities, but a partner,  
6 officer or director of a broker-dealer or issuer, or an  
7 individual having a similar status or performing similar  
8 functions, is an agent only if the individual otherwise comes  
9 within the term. "Agent" does not include an individual  
10 excluded by rule adopted or order issued pursuant to the New  
11 Mexico Uniform Securities Act;

12           B. "bank" means:

13                   (1) a banking institution organized pursuant  
14 to the laws of the United States;

15                   (2) a member bank of the federal reserve  
16 system;

17                   (3) any other banking institution, whether  
18 incorporated or not, doing business pursuant to the laws of a  
19 state or of the United States, a substantial portion of the  
20 business of which consists of receiving deposits or exercising  
21 fiduciary powers similar to those permitted to be exercised by  
22 national banks pursuant to the authority of the comptroller of  
23 the currency pursuant to Section 1 of Public Law 87-722 (12  
24 U.S.C. Section 92a) and that is supervised and examined by a  
25 state or federal agency having supervision over banks and that

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1 is not operated for the purpose of evading the New Mexico  
2 Uniform Securities Act; and

3 (4) a receiver, conservator or other  
4 liquidating agent of any institution or firm included in  
5 Paragraph (1), (2) or (3) of this subsection;

6 C. "broker-dealer" means a person engaged in the  
7 business of effecting transactions in securities for the  
8 account of others or for the person's own account.

9 "Broker-dealer" does not include:

10 (1) an agent;  
11 (2) an issuer;  
12 (3) a bank or savings institution described in  
13 Paragraph (2) of Subsection D of this section if its activities  
14 as a broker-dealer are limited to those specified in  
15 Subsections 3(a)(4)(B)(i) through (vi), (viii) through (x) and  
16 (xi), if limited to unsolicited transactions; 3(a)(5)(B); and  
17 3(a)(5)(C) of the federal Securities Exchange Act of 1934 (15  
18 U.S.C. Sections 78c(a)(4) and (5)) or a bank that satisfies the  
19 conditions described in Subsection 3(a)(4)(E) of the federal  
20 Securities Exchange Act of 1934 (15 U.S.C. Section 78c(a)(4));

21 (4) an international banking institution; or  
22 (5) a person excluded by rule adopted or order  
23 issued pursuant to the New Mexico Uniform Securities Act;

24 D. "depository institution" means:

25 (1) a bank; or

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1                   (2) a savings institution, trust company,  
2 credit union or similar institution that is organized or  
3 chartered pursuant to the laws of a state or of the United  
4 States, authorized to receive deposits and supervised and  
5 examined by an official or agency of a state or the United  
6 States if its deposits or share accounts are insured to the  
7 maximum amount authorized by statute by the federal deposit  
8 insurance corporation, the national credit union share  
9 insurance fund or a successor authorized by federal law, or a  
10 receiver, conservator or other liquidating agent of such  
11 institutions or entities. "Depository institution" does not  
12 include:

13                                 (a) an insurance company or other  
14 organization primarily engaged in the business of insurance;

15                                 (b) a Morris plan bank; or

16                                 (c) an industrial loan company that is  
17 not an "insured depository institution" as defined in Section  
18 3(c)(2) of the Federal Deposit Insurance Act, 12 U.S.C.  
19 1813(c)(2), or any successor federal statute;

20                                 E. "director" means the director of the securities  
21 division of the regulation and licensing department;

22                                 F. "division" means the securities division of the  
23 regulation and licensing department, which for purposes of  
24 administering the provisions of the New Mexico Uniform  
25 Securities Act and conducting investigations of violations of

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1 that act shall be considered a law enforcement agency;

2 G. "federal covered investment adviser" means a  
3 person registered pursuant to the federal Investment Advisers  
4 Act of 1940;

5 H. "federal covered security" means a security that  
6 is, or upon completion of a transaction will be, a covered  
7 security pursuant to Section 18(b) of the federal Securities  
8 Act of 1933 (15 U.S.C. Section 77r(b)) or rules or regulations  
9 adopted pursuant to that section;

10 I. "filing" means the receipt pursuant to the New  
11 Mexico Uniform Securities Act of a record by the director, or a  
12 designee of the director, in a form and format designated by  
13 the director;

14 J. "fraud", "deceit" and "defraud" are not limited  
15 to common law deceit and need not include scienter or intent to  
16 defraud as elements;

17 K. "guaranteed" means guaranteed as to payment of  
18 all principal and all interest;

19 L. "institutional investor" means any of the  
20 following, whether acting for itself or for others in a  
21 fiduciary capacity:

22 (1) a depository institution or international  
23 banking institution;

24 (2) an insurance company;

25 (3) a separate account of an insurance

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1 company;

2 (4) an investment company as defined in the  
3 federal Investment Company Act of 1940;

4 (5) a broker-dealer registered pursuant to the  
5 federal Securities Exchange Act of 1934;

6 (6) an employee pension, profit-sharing or  
7 benefit plan if the plan has total assets in excess of ten  
8 million dollars (\$10,000,000) or its investment decisions are  
9 made by a named fiduciary, as defined in the federal Employee  
10 Retirement Income Security Act of 1974, that is a broker-dealer  
11 registered pursuant to the federal Securities Exchange Act of  
12 1934, an investment adviser registered or exempt from  
13 registration pursuant to the federal Investment Advisers Act of  
14 1940, an investment adviser registered pursuant to the New  
15 Mexico Uniform Securities Act, a depository institution or an  
16 insurance company;

17 (7) a plan established and maintained by a  
18 state, a political subdivision of a state or an agency or  
19 instrumentality of a state or a political subdivision of a  
20 state for the benefit of its employees, if the plan has total  
21 assets in excess of ten million dollars (\$10,000,000) or its  
22 investment decisions are made by a duly designated public  
23 official or by a named fiduciary, as defined in the federal  
24 Employee Retirement Income Security Act of 1974, that is a  
25 broker-dealer registered pursuant to the federal Securities

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1 Exchange Act of 1934, an investment adviser registered or  
2 exempt from registration pursuant to the federal Investment  
3 Advisers Act of 1940, an investment adviser registered pursuant  
4 to the New Mexico Uniform Securities Act, a depository  
5 institution or an insurance company;

6 (8) a trust, if it has total assets in excess  
7 of ten million dollars (\$10,000,000), its trustee is a  
8 depository institution and its participants are exclusively  
9 plans of the types identified in Paragraph (6) or (7) of this  
10 subsection, regardless of the size of their assets, except a  
11 trust that includes as participants self-directed individual  
12 retirement accounts or similar self-directed plans;

13 (9) an organization described in Section  
14 501(c)(3) of the federal Internal Revenue Code of 1986  
15 (26 U.S.C. Section 501(c)(3)), corporation, Massachusetts trust  
16 or similar business trust, limited liability company or  
17 partnership, not formed for the specific purpose of acquiring  
18 the securities offered, with total assets in excess of ten  
19 million dollars (\$10,000,000);

20 (10) a small business investment company  
21 licensed by the small business administration pursuant to  
22 Section 301(c) of the federal Small Business Investment Act of  
23 1958 (15 U.S.C. Section 681(c)) with total assets in excess of  
24 ten million dollars (\$10,000,000);

25 (11) a private business development company as

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1 defined in Section 202(a)(22) of the federal Investment  
2 Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(22)) with  
3 total assets in excess of ten million dollars (\$10,000,000);

4 (12) a federal covered investment adviser  
5 acting for its own account;

6 (13) a "qualified institutional buyer", as  
7 defined in Rule 144A(a)(i)(1), other than Rule 144A(a)(1)(H),  
8 adopted pursuant to the federal Securities Act of 1933  
9 (17 C.F.R. 230.144A);

10 (14) a "major U.S. institutional investor" as  
11 defined in Rule 15a-6(b)(4)(i)(17 C.F.R. 240.15a-6) adopted  
12 pursuant to the federal Securities Exchange Act of 1934;

13 (15) any other person, other than an  
14 individual, of institutional character with total assets in  
15 excess of ten million dollars (\$10,000,000) not organized for  
16 the specific purpose of evading the New Mexico Uniform  
17 Securities Act; or

18 (16) any other person specified by rule  
19 adopted or order issued pursuant to the New Mexico Uniform  
20 Securities Act;

21 M. "insurance company" means a company organized as  
22 an insurance company whose primary business is writing  
23 insurance or reinsuring risks underwritten by insurance  
24 companies and that is subject to supervision by the insurance  
25 commissioner or a similar official or agency of a state;

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1 N. "insured" means insured as to payment of all  
2 principal and all interest;

3 O. "international banking institution" means an  
4 international financial institution of which the United States  
5 is a member and whose securities are exempt from registration  
6 pursuant to the federal Securities Act of 1933;

7 P. "investment adviser" means a person that, for  
8 compensation, engages in the business of advising others,  
9 either directly or through publications or writings, as to the  
10 value of securities or the advisability of investing in,  
11 purchasing or selling securities or that, for compensation and  
12 as a part of a regular business, issues or promulgates analyses  
13 or reports concerning securities. "Investment adviser"  
14 includes a financial planner or other person that, as an  
15 integral component of other financially related services,  
16 provides investment advice to others for compensation as part  
17 of a business or that holds itself out as providing investment  
18 advice to others for compensation. "Investment adviser" does  
19 not include:

20 (1) an investment adviser representative;  
21 (2) a lawyer, accountant, engineer or teacher  
22 whose performance of investment advice is solely incidental to  
23 the practice of the person's profession;

24 (3) a broker-dealer or its agents whose  
25 performance of investment advice is solely incidental to the

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1 conduct of business as a broker-dealer and that does not  
2 receive special compensation for the investment advice;

3 (4) a publisher, employee or columnist of a  
4 bona fide newspaper, news magazine or business or financial  
5 publication of general and regular circulation or an owner  
6 operator, producer or employee of a cable, radio or television  
7 network, station or production facility, if, in either case:

8 (a) the financial or business news or  
9 advice is contained in a publication or broadcast disseminated  
10 to the general public; and

11 (b) the content does not consist of  
12 rendering advice on the basis of the specific investment  
13 situation of each client;

14 (5) a federal covered investment adviser;

15 (6) a bank or a savings institution described  
16 in Paragraph (2) of Subsection D of this section; or

17 (7) any other person excluded by rule adopted  
18 or order issued pursuant to the New Mexico Uniform Securities  
19 Act;

20 Q. "investment adviser representative" means an  
21 individual employed by or associated with an investment adviser  
22 or federal covered investment adviser and who makes any  
23 recommendations or otherwise gives investment advice regarding  
24 securities, manages accounts or portfolios of clients,  
25 determines which recommendation or advice regarding securities

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1 should be given, provides investment advice or holds herself or  
2 himself out as providing investment advice, receives  
3 compensation to solicit, offer or negotiate for the sale of or  
4 for selling investment advice or supervises employees who  
5 perform any of the foregoing. "Investment adviser  
6 representative" does not include an individual who:

7 (1) performs only clerical or ministerial  
8 acts;

9 (2) is an agent whose performance of  
10 investment advice is solely incidental to the individual acting  
11 as an agent and who does not receive special compensation for  
12 investment advisory services;

13 (3) is employed by or associated with a  
14 federal covered investment adviser, unless the individual has a  
15 place of business in New Mexico, as "place of business" is  
16 defined by rule adopted pursuant to Section 203A of the federal  
17 Investment Advisers Act of 1940 (15 U.S.C. Section 80b-3a) and  
18 is:

19 (a) an investment adviser  
20 representative, as "investment adviser representative" is  
21 defined by rule adopted pursuant to Section 203A of the federal  
22 Investment Advisers Act of 1940 (15 U.S.C. Section 80b-3a); or

23 (b) not a supervised person as  
24 "supervised person" is defined in Section 202(a)(25) of the  
25 federal Investment Advisers Act of 1940 (15 U.S.C. Section

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1 80b-2(a)(25)); or

2 (4) is excluded by rule adopted or order  
3 issued pursuant to the New Mexico Uniform Securities Act;

4 R. "issuer" means a person that issues or proposes  
5 to issue a security, subject to the following:

6 (1) the issuer of a voting trust certificate,  
7 collateral trust certificate, certificate of deposit for a  
8 security or share in an investment company without a board of  
9 directors or individuals performing similar functions is the  
10 person performing the acts and assuming the duties of depositor  
11 or manager pursuant to the trust or other agreement or  
12 instrument under which the security is issued;

13 (2) the issuer of an equipment trust  
14 certificate or similar security serving the same purpose is the  
15 person by which the property is or will be used or to which the  
16 property or equipment is or will be leased or conditionally  
17 sold or that is otherwise contractually responsible for  
18 assuring payment of the certificate; and

19 (3) the issuer of a fractional undivided  
20 interest in an oil, gas or other mineral lease or in payments  
21 out of production pursuant to a lease, right or royalty is the  
22 owner of an interest in the lease or in payments out of  
23 production pursuant to a lease, right or royalty, whether whole  
24 or fractional, that creates fractional interests for the  
25 purpose of sale;

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1           S. "legal rate of interest" means the rate of  
2 interest set by Subsection A of Section 56-8-4 NMSA 1978 or its  
3 successor statutes;

4           T. "nonissuer transaction" or "nonissuer  
5 distribution" means a transaction or distribution not directly  
6 or indirectly for the benefit of the issuer;

7           U. "offer to purchase" includes an attempt or offer  
8 to obtain, or solicitation of an offer to sell, a security or  
9 interest in a security for value. "Offer to purchase" does not  
10 include a tender offer that is subject to Section 14(d) of the  
11 federal Securities Exchange Act of 1934 (15 U.S.C. 78n(d));

12           V. "person" means an individual; corporation;  
13 business trust; estate; trust; partnership; limited liability  
14 company; association; joint venture; government; governmental  
15 subdivision, agency or instrumentality; public corporation; or  
16 any other legal or commercial entity;

17           W. "place of business" of a broker-dealer, an  
18 investment adviser or a federal covered investment adviser  
19 means:

20                   (1) an office at which the broker-dealer,  
21 investment adviser or federal covered investment adviser  
22 regularly provides brokerage or investment advice or solicits,  
23 meets with or otherwise communicates with customers or clients;  
24 or

25                   (2) a location that is held out to the general

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1 public as a location at which the broker-dealer, investment  
2 adviser or federal covered investment adviser provides  
3 brokerage or investment advice or solicits, meets with or  
4 otherwise communicates with customers or clients;

5 X. "predecessor act" means the New Mexico  
6 Securities Act of 1986;

7 Y. "price amendment" means the amendment to a  
8 registration statement filed pursuant to the federal Securities  
9 Act of 1933 or, if an amendment is not filed, the prospectus or  
10 prospectus supplement filed pursuant to that act that includes  
11 a statement of the offering price, underwriting and selling  
12 discounts or commissions, amount of proceeds, conversion rates,  
13 call prices and other matters dependent upon the offering  
14 price;

15 Z. "principal place of business" of a broker-  
16 dealer, investment adviser or federal covered investment  
17 adviser means the executive office of the broker-dealer,  
18 investment adviser or federal covered investment adviser from  
19 which the officers, partners or managers of the broker-dealer,  
20 investment adviser or federal covered investment adviser  
21 direct, control and coordinate the activities of the broker-  
22 dealer, investment adviser or federal covered investment  
23 adviser;

24 AA. "record", except in the phrases "of record",  
25 "official record" and "public record", means information that

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1 is inscribed on a tangible medium or that is stored in an  
2 electronic or other medium and is retrievable in perceivable  
3 form;

4 BB. "sale" includes every contract of sale,  
5 contract to sell or disposition of a security or interest in a  
6 security for value, and "offer to sell" includes every attempt  
7 or offer to dispose of, or solicitation of an offer to  
8 purchase, a security or interest in a security for value. Both  
9 terms include:

10 (1) a security given or delivered with, or as  
11 a bonus on account of, a purchase of securities or any other  
12 thing constituting part of the subject of the purchase and  
13 having been offered and sold for value;

14 (2) a gift of assessable stock involving an  
15 offer and sale; and

16 (3) a sale or offer of a warrant or right to  
17 purchase or subscribe to another security of the same or  
18 another issuer and a sale or offer of a security that gives the  
19 holder a present or future right or privilege to convert the  
20 security into another security of the same or another issuer,  
21 including an offer of the other security;

22 CC. "securities and exchange commission" means the  
23 United States securities and exchange commission;

24 DD. "security" means a note; stock; treasury stock;  
25 security future; bond; debenture; evidence of indebtedness;

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1 certificate of interest or participation in a profit-sharing  
2 agreement; collateral trust certificate; preorganization  
3 certificate or subscription; transferable share; investment  
4 contract; voting trust certificate; certificate of deposit for  
5 a security; fractional undivided interest in oil, gas or other  
6 mineral rights; put, call, straddle, option or privilege on a  
7 security, certificate of deposit or group or index of  
8 securities, including an interest therein or based on the value  
9 thereof; put, call, straddle, option or privilege entered into  
10 on a national securities exchange relating to foreign currency;  
11 or, in general, an interest or instrument commonly known as a  
12 "security"; or a certificate of interest or participation in,  
13 temporary or interim certificate for, receipt for, guarantee of  
14 or warrant or right to subscribe to or purchase any of the  
15 foregoing. "Security":

16 (1) includes both a certificated and an  
17 uncertificated security;

18 (2) does not include an insurance or endowment  
19 policy or annuity contract pursuant to which an insurance  
20 company promises to pay a fixed or variable sum of money either  
21 in a lump sum or periodically for life or other specified  
22 period;

23 (3) does not include an interest in a  
24 contributory or noncontributory pension or welfare plan subject  
25 to the federal Employee Retirement Income Security Act of 1974;

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1 (4) does not include landowner royalties in  
2 the production of oil, gas or other minerals created through  
3 the execution of a lease of the lessor's mineral interest;

4 (5) includes an investment in a common  
5 enterprise with the expectation of profits to be derived  
6 primarily from the efforts of a person other than the investor.  
7 As used in this paragraph, "common enterprise" means an  
8 enterprise in which the fortunes of the investor are interwoven  
9 with those of either the person offering the investment, a  
10 third party or other investors;

11 (6) includes any interest in a limited  
12 partnership or a limited liability company; and

13 (7) includes as an investment contract an  
14 investment in a viatical settlement or similar agreement;

15 EE. "self-regulatory organization" means a national  
16 securities exchange registered pursuant to the federal  
17 Securities Exchange Act of 1934, a national securities  
18 association of broker-dealers registered pursuant to that act,  
19 a clearing agency registered pursuant to that act or the  
20 municipal securities rulemaking board established pursuant to  
21 that act;

22 FF. "sign" means, with present intent to  
23 authenticate or adopt a record:

24 (1) to execute or adopt a tangible symbol; or

25 (2) to attach or logically associate with the

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1 record an electronic symbol, sound or process;

2 GG. "state" means a state of the United States, the  
3 District of Columbia, Puerto Rico, the United States Virgin  
4 Islands or any territory or insular possession subject to the  
5 jurisdiction of the United States; and

6 HH. "underwriter" means any person who has  
7 purchased from an issuer with the intent to offer or sell a  
8 security or to distribute any security; who participates or has  
9 a direct or indirect participation in any undertaking; or who  
10 participates or has a participation in the direct or indirect  
11 underwriting of any undertaking. "Underwriter" does not  
12 include a person whose interest is limited to a commission from  
13 an underwriter or dealer not in excess of the usual and  
14 customary distributors' or sellers' commission. As used in  
15 this subsection, "issuer" includes any person directly or  
16 indirectly controlling or controlled by the issuer; or any  
17 person under direct or indirect common control with the  
18 issuer."

19 SECTION 3. Section 58-13C-508 NMSA 1978 (being Laws 2009,  
20 Chapter 82, Section 508) is amended to read:

21 "58-13C-508. CRIMINAL PENALTIES.--

22 A. A person who willfully violates Section [~~501 or~~  
23 ~~502 of the New Mexico Uniform Securities Act]~~ 58-13C-501 or  
24 58-13C-502 NMSA 1978 is guilty of a third degree felony and,  
25 upon conviction, shall be fined not more than five thousand

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1 dollars (\$5,000) or imprisoned not more than three years, or  
2 both, for each violation. For purposes of Subsection B of  
3 Section 31-18-13 NMSA 1978, the minimum term prescribed by this  
4 subsection is three years.

5 B. A person who willfully violates Section [~~505 of~~  
6 ~~the New Mexico Uniform Securities Act~~] 58-13C-505 NMSA 1978  
7 knowing the statement made to be false or misleading in a  
8 material respect is guilty of a third degree felony and, upon  
9 conviction, shall be fined not more than five thousand dollars  
10 (\$5,000) or imprisoned not more than three years, or both, for  
11 each violation. For purposes of Subsection B of Section  
12 31-18-13 NMSA 1978, the minimum term prescribed by this  
13 subsection is three years.

14 C. No criminal penalties apply to violations of  
15 Section [~~504 of the New Mexico Uniform Securities Act~~]  
16 58-13C-504 NMSA 1978 or the notice filing requirements of  
17 Section [~~302 or 405 of that act~~] 58-13C-302 or 58-13C-405 NMSA  
18 1978.

19 D. Except as provided in Subsections A through C of  
20 this section, a person who willfully violates any provision of  
21 the New Mexico Uniform Securities Act or a rule adopted or  
22 order issued pursuant to that act is guilty of a fourth degree  
23 felony and, upon conviction, shall be fined not more than five  
24 thousand dollars (\$5,000) or imprisoned not more than eighteen  
25 months, or both, for each violation. For purposes of

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1 Subsection B of Section 31-18-13 NMSA 1978, the minimum term  
2 prescribed by this subsection is eighteen months.

3 E. An individual convicted of violating a rule or  
4 order pursuant to the New Mexico Uniform Securities Act may be  
5 fined, but shall not be imprisoned, if the individual did not  
6 have knowledge of the rule or order.

7 F. For the purposes of this section, "willfully"  
8 means purposely or intentionally committing the act or making  
9 the omission and does not require an intent to violate the law  
10 or knowledge that the act or omission is unlawful.

11 G. Each offense shall constitute a separate  
12 offense, and a prosecution for any one of such offenses shall  
13 not bar prosecution or conviction for any other offenses.

14 H. All persons convicted of criminal violations of  
15 the New Mexico Uniform Securities Act shall be sentenced in  
16 accordance with the Criminal Sentencing Act or its successor  
17 statute.

18 I. No indictment or information may be brought  
19 pursuant to this section more than five years after the alleged  
20 violation.

21 J. The attorney general, acting without a letter of  
22 declination from a district attorney or the proper district  
23 attorney, with or without a referral from the director, may  
24 institute criminal proceedings pursuant to the New Mexico  
25 Uniform Securities Act. The attorney general or district

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1 attorney may request assistance from the director or employees  
2 of the division. When so requested by the director, the  
3 attorney general shall commission as a special assistant  
4 attorney general any attorney employed by the director or  
5 contracted with by the director and approved by the attorney  
6 general to assist the director in carrying out the director's  
7 duties, including providing legal advice and prosecuting  
8 offenders.

9 K. The New Mexico Uniform Securities Act does not  
10 limit the power of New Mexico to punish a person for conduct  
11 that constitutes a crime pursuant to other laws of New Mexico."

12 SECTION 4. Section 58-13C-509 NMSA 1978 (being Laws 2009,  
13 Chapter 82, Section 509) is amended to read:

14 "58-13C-509. CIVIL LIABILITY.--

15 A. Enforcement of civil liability pursuant to this  
16 section is subject to the federal Securities Litigation Uniform  
17 Standards Act of 1998 (P.L. 105-353, 112 Stat. 3227, et seq.).

18 B. A person is liable to the purchaser if the  
19 person sells a security in violation of Section [~~301 of the New~~  
20 ~~Mexico Uniform Securities Act~~] 58-13C-301 NMSA 1978 or, by  
21 means of an untrue statement of a material fact or an omission  
22 to state a material fact necessary in order to make the  
23 statement made, in light of the circumstances pursuant to which  
24 it is made, not misleading, the purchaser not knowing the  
25 untruth or omission and the seller not sustaining the burden of

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1 proof that the seller did not know and, in the exercise of  
2 reasonable care, could not have known of the untruth or  
3 omission. An action pursuant to this subsection is governed by  
4 the following:

5 (1) the purchaser may maintain an action to  
6 recover the consideration paid for the security, less the  
7 amount of any income received on the security, and interest at  
8 the legal rate of interest from the date of the purchase, costs  
9 and reasonable attorney fees determined by the court, upon the  
10 tender of the security, or for actual damages as provided in  
11 Paragraph (3) of this subsection;

12 (2) the tender referred to in Paragraph (1) of  
13 this subsection may be made any time before entry of judgment.  
14 Tender requires only notice in a record of ownership of the  
15 security and willingness to exchange the security for the  
16 amount specified. A purchaser that no longer owns the security  
17 may recover actual damages as provided in Paragraph (3) of this  
18 subsection; and

19 (3) actual damages in an action arising  
20 pursuant to this subsection are the amount that would be  
21 recoverable upon a tender less the value of the security when  
22 the purchaser disposed of it, and interest at the legal rate of  
23 interest from the date of the purchase, costs and reasonable  
24 attorney fees determined by the court.

25 C. A person is liable to the seller if the person

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1 buys a security by means of an untrue statement of a material  
2 fact or omission to state a material fact necessary in order to  
3 make the statement made, in light of the circumstances pursuant  
4 to which it is made, not misleading, the seller not knowing of  
5 the untruth or omission, and the purchaser not sustaining the  
6 burden of proof that the purchaser did not know, and in the  
7 exercise of reasonable care could not have known, of the  
8 untruth or omission. An action pursuant to this subsection is  
9 governed by the following:

10 (1) the seller may maintain an action to  
11 recover the security, and any income received on the security,  
12 costs and reasonable attorney fees determined by the court,  
13 upon the tender of the purchase price, or for actual damages as  
14 provided in Paragraph (3) of this subsection;

15 (2) the tender referred to in Paragraph (1) of  
16 this subsection may be made any time before entry of judgment.  
17 Tender requires only notice in a record of the present ability  
18 to pay the amount tendered and willingness to take delivery of  
19 the security for the amount specified. If the purchaser no  
20 longer owns the security, the seller may recover actual damages  
21 as provided in Paragraph (3) of this subsection; and

22 (3) actual damages in an action arising  
23 pursuant to this subsection are the difference between the  
24 price at which the security was sold and the value the security  
25 would have had at the time of the sale in the absence of the

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1 purchaser's conduct causing liability, and interest at the  
2 legal rate of interest from the date of the sale of the  
3 security, costs and reasonable attorney fees determined by the  
4 court.

5 D. A person acting as a broker-dealer or agent that  
6 sells or buys a security in violation of Subsection A of  
7 Section [~~401 of the New Mexico Uniform Securities Act~~]  
8 58-13C-401 NMSA 1978, Subsection A of Section [~~402 of that act~~]  
9 58-13C-402 NMSA 1978 or Section [~~506 of that act~~] 58-13C-506  
10 NMSA 1978 is liable to the customer. The customer, if a  
11 purchaser, may maintain an action for recovery of actual  
12 damages as specified in Paragraphs (1) through (3) of  
13 Subsection B of this section, or, if a seller, for a remedy as  
14 specified in Paragraphs (1) through (3) of Subsection C of this  
15 section.

16 E. A person acting as an investment adviser or  
17 investment adviser representative that provides investment  
18 advice for compensation in violation of Subsection A of Section  
19 [~~403 of the New Mexico Uniform Securities Act~~] 58-13C-403 NMSA  
20 1978, Subsection A of Section [~~404 of that act~~] 58-13C-404 NMSA  
21 1978 or Section [~~506 of that act~~] 58-13C-506 NMSA 1978 is  
22 liable to the client. The client may maintain an action to  
23 recover the consideration paid for the advice, interest at the  
24 legal rate of interest from the date of payment, costs and  
25 reasonable attorney fees determined by the court.

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1 F. A person that receives, directly or indirectly,  
2 any consideration for providing investment advice to another  
3 person and that employs a device, scheme or artifice to defraud  
4 the other person or engages in an act, practice or course of  
5 business that operates or would operate as a fraud or deceit on  
6 the other person, is liable to the other person. An action  
7 pursuant to this subsection is governed by the following:

8 (1) the person defrauded may maintain an  
9 action to recover the consideration paid for the advice and the  
10 amount of any actual damages caused by the fraudulent conduct,  
11 interest at the legal rate of interest from the date of the  
12 fraudulent conduct, costs and reasonable attorney fees  
13 determined by the court, less the amount of any income received  
14 as a result of the fraudulent conduct; and

15 (2) this subsection does not apply to a  
16 broker-dealer or its agents if the investment advice provided  
17 is solely incidental to transacting business as a broker-dealer  
18 and no special compensation is received for the investment  
19 advice.

20 G. The following persons are liable jointly and  
21 severally with and to the same extent as persons liable  
22 pursuant to Subsections B through F of this section:

23 (1) a person that directly or indirectly  
24 controls a person liable pursuant to Subsections B through F of  
25 this section, unless the controlling person sustains the burden

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1 of proof that the person did not know, and in the exercise of  
2 reasonable care could not have known, of the existence of  
3 conduct by reason of which the liability is alleged to exist;

4 (2) an individual who is a managing partner,  
5 executive officer or director of a person liable pursuant to  
6 Subsections B through F of this section, including an  
7 individual having a similar status or performing similar  
8 functions, unless the individual sustains the burden of proof  
9 that the individual did not know and, in the exercise of  
10 reasonable care could not have known, of the existence of  
11 conduct by reason of which the liability is alleged to exist;

12 (3) an individual who is an employee of or  
13 associated with a person liable pursuant to Subsections B  
14 through F of this section and who materially aids the conduct  
15 giving rise to the liability, unless the individual sustains  
16 the burden of proof that the individual did not know and, in  
17 the exercise of reasonable care could not have known, of the  
18 existence of conduct by reason of which the liability is  
19 alleged to exist; and

20 (4) a person that is a broker-dealer, agent,  
21 investment adviser or investment adviser representative that  
22 materially aids the conduct giving rise to the liability  
23 pursuant to Subsections B through F of this section, unless the  
24 person sustains the burden of proof that the person did not  
25 know and, in the exercise of reasonable care could not have

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1 known, of the existence of conduct by reason of which liability  
2 is alleged to exist.

3 H. A person liable pursuant to this section has a  
4 right of contribution as in cases of contract against any other  
5 person liable pursuant to this section for the same conduct.

6 I. A cause of action pursuant to this section  
7 survives the death of an individual who might have been a  
8 plaintiff or defendant.

9 J. A person shall not obtain relief unless the suit  
10 is brought:

11 (1) within [~~two~~] four years after discovery of  
12 the violation or after discovery should have been made by the  
13 exercise of reasonable diligence; and

14 (2) within [~~five~~] ten years after the act or  
15 transaction constituting the violation.

16 K. A person that has made, or has engaged in the  
17 performance of, a contract in violation of the New Mexico  
18 Uniform Securities Act or a rule adopted or order issued  
19 pursuant to that act, or that has acquired a purported right  
20 pursuant to the contract with knowledge of conduct by reason of  
21 which its making or performance was in violation of the New  
22 Mexico Uniform Securities Act, may not base an action on the  
23 contract.

24 L. A condition, stipulation or provision binding a  
25 person purchasing or selling a security or receiving investment

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1 advice to waive compliance with the New Mexico Uniform  
2 Securities Act, or a rule adopted or order issued pursuant to  
3 that act, is void.

4 M. The rights and remedies provided by the New  
5 Mexico Uniform Securities Act are in addition to any other  
6 rights or remedies that may exist, but that act does not create  
7 a cause of action not specified in this section or Subsection E  
8 of Section [~~411 of that act~~] 58-13C-411 NMSA 1978."

9 SECTION 5. Section 58-13C-602 NMSA 1978 (being Laws 2009,  
10 Chapter 82, Section 602) is amended to read:

11 "58-13C-602. INVESTIGATIONS AND SUBPOENAS.--

12 A. The director or attorney general may:

13 (1) conduct public or private investigations  
14 within or outside of New Mexico that the director or attorney  
15 general considers necessary or appropriate to determine whether  
16 a person has violated, is violating or is about to violate the  
17 New Mexico Uniform Securities Act, or a rule adopted or order  
18 issued pursuant to that act, or to aid in the enforcement of  
19 the New Mexico Uniform Securities Act or in the adoption of  
20 rules and forms pursuant to that act;

21 (2) require or permit a person to testify,  
22 file a statement or produce a record, under oath or otherwise  
23 as the director or attorney general determines, as to all the  
24 facts and circumstances concerning a matter to be investigated  
25 or about which an action or proceeding is to be instituted; and

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1 (3) publish a record concerning an action,  
2 proceeding or an investigation pursuant to or a violation of  
3 the New Mexico Uniform Securities Act or a rule adopted or  
4 order issued pursuant to that act if the director or attorney  
5 general determines it is necessary or appropriate in the public  
6 interest and for the protection of investors.

7 B. For the purpose of an investigation pursuant to  
8 the New Mexico Uniform Securities Act, the director or the  
9 director's designated officer or the attorney general may  
10 administer oaths and affirmations, subpoena witnesses, seek  
11 compulsion of attendance, take evidence, require the filing of  
12 statements and require the production of any records that the  
13 director or attorney general considers relevant or material to  
14 the investigation.

15 C. If a person does not appear or refuses to  
16 testify, file a statement, produce records or otherwise does  
17 not obey a subpoena as required by the director or attorney  
18 general pursuant to the New Mexico Uniform Securities Act, the  
19 director or attorney general may apply to the district court of  
20 Santa Fe county or other appropriate district court or to a  
21 court of another state, a federal court or a court of a foreign  
22 jurisdiction, or the director may refer the matter to the  
23 attorney general or the proper district attorney to enforce  
24 compliance. The court may:

25 (1) hold the person in contempt;

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1 (2) order the person to appear before the  
2 director;

3 (3) order the person to testify about the  
4 matter under investigation or in question;

5 (4) order the production of records;

6 (5) grant injunctive relief, including  
7 restricting or prohibiting the offer or sale of securities or  
8 the providing of investment advice;

9 (6) impose a civil penalty of not more than  
10 ten thousand dollars (\$10,000) for each violation; and

11 (7) grant any other necessary or appropriate  
12 relief.

13 D. This section does not preclude a person from  
14 applying to the appropriate district court or a court of  
15 another state for relief from a request to appear, testify,  
16 file a statement, produce records or obey a subpoena.

17 E. An individual is not excused from attending,  
18 testifying, filing a statement, producing a record or other  
19 evidence or obeying a subpoena of the director or attorney  
20 general pursuant to the New Mexico Uniform Securities Act or in  
21 an action or proceeding instituted by the director or attorney  
22 general pursuant to that act on the grounds that the required  
23 testimony, statement, record or other evidence, directly or  
24 indirectly, may tend to incriminate the individual or subject  
25 the individual to a criminal fine, penalty or forfeiture. If

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1 the individual refuses to testify, file a statement or produce  
2 a record or other evidence on the basis of the individual's  
3 privilege against self-incrimination, the director or attorney  
4 general may apply to the district court of Santa Fe county or  
5 other appropriate district court or to a court of another  
6 state, a federal court or a court of a foreign jurisdiction to  
7 compel the testimony, the filing of the statement, the  
8 production of the record or the giving of other evidence. The  
9 testimony, record or other evidence compelled pursuant to such  
10 an order shall not be used, directly or indirectly, against the  
11 individual in a criminal case, except in a prosecution for  
12 perjury or contempt or otherwise failing to comply with the  
13 order.

14 F. At the request of the securities regulator of  
15 another state or a foreign jurisdiction, the director or  
16 attorney general may provide assistance if the requesting  
17 regulator states that it is conducting an investigation to  
18 determine whether a person has violated, is violating or is  
19 about to violate a law or rule of the other state or foreign  
20 jurisdiction relating to securities matters that the requesting  
21 regulator administers or enforces. The director or attorney  
22 general may provide the assistance by using the authority to  
23 investigate and the powers conferred by this section as the  
24 director or attorney general determines is necessary or  
25 appropriate. The assistance may be provided without regard to

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1 whether the conduct described in the request would also  
2 constitute a violation of the New Mexico Uniform Securities Act  
3 or other law of New Mexico if occurring in New Mexico. In  
4 deciding whether to provide the assistance, the director or  
5 attorney general may consider whether the requesting regulator  
6 is permitted and has agreed to provide assistance reciprocally  
7 within its state or foreign jurisdiction to the director or  
8 attorney general on securities matters when requested; whether  
9 compliance with the request would violate or prejudice the  
10 public policy of New Mexico; and the availability of resources  
11 and employees of the director or attorney general to carry out  
12 the request for assistance."

13 SECTION 6. Section 58-13C-603 NMSA 1978 (being Laws 2009,  
14 Chapter 82, Section 603) is amended to read:

15 "58-13C-603. CIVIL ENFORCEMENT.--

16 A. If the director or attorney general believes  
17 that a person has engaged, is engaging or is about to engage in  
18 an act, practice or course of business constituting a violation  
19 of the New Mexico Uniform Securities Act or a rule adopted or  
20 order issued pursuant to that act or that a person has, is or  
21 is about to engage in an act, practice or course of business  
22 that materially aids a violation of the New Mexico Uniform  
23 Securities Act or a rule adopted or order issued pursuant to  
24 that act, the director or attorney general may maintain an  
25 action to enjoin the act, practice or course of business and to

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1 enforce compliance with the New Mexico Uniform Securities Act  
2 or a rule adopted or order issued pursuant to that act.

3 B. In an action pursuant to this section and on a  
4 proper showing, the court may:

5 (1) issue a permanent or temporary injunction,  
6 restraining order or declaratory judgment;

7 (2) order other appropriate or ancillary  
8 relief, which may include:

9 (a) an asset freeze, accounting, writ of  
10 attachment, writ of general or specific execution and  
11 appointment of a receiver or conservator, that may be the  
12 director or attorney general, for the defendant or the  
13 defendant's assets;

14 (b) ordering the director or attorney  
15 general to take charge and control of a defendant's property,  
16 including investment accounts and accounts in a depository  
17 institution, rents and profits; to collect debts; and to  
18 acquire and dispose of property;

19 (c) imposing a civil penalty of up to  
20 ten thousand dollars (\$10,000) for each violation;

21 (d) an order of rescission, restitution  
22 or disgorgement directed to a person that has engaged in an  
23 act, practice or course of business constituting a violation of  
24 the New Mexico Uniform Securities Act or the predecessor act or  
25 a rule adopted or order issued pursuant to the New Mexico

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1 Uniform Securities Act or the predecessor act;

2 (e) ordering the payment of prejudgment  
3 and postjudgment interest; and

4 (f) ordering the payment of litigation  
5 expenses of the director or attorney general; and

6 (3) order such other relief as the court  
7 considers appropriate.

8 C. If a person violates a provision of the New  
9 Mexico Uniform Securities Act and the violation is directed  
10 toward, targets or is committed against a person who, at the  
11 time of the violation, is sixty-two years of age or older, the  
12 court, in addition to any other civil penalties provided for  
13 pursuant to the New Mexico Uniform Securities Act or a rule  
14 issued pursuant to that act, may impose an additional civil  
15 penalty not to exceed ten thousand dollars (\$10,000) for each  
16 violation.

17 D. The director or attorney general shall not be  
18 required to post a bond in an action or proceeding pursuant to  
19 the New Mexico Uniform Securities Act."

20 SECTION 7. Section 58-13C-608 NMSA 1978 (being Laws 2009,  
21 Chapter 82, Section 608) is amended to read:

22 "58-13C-608. UNIFORMITY AND COOPERATION WITH OTHER  
23 AGENCIES.--

24 A. The director or attorney general may, in the  
25 director's or attorney general's discretion, cooperate,

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1 coordinate, consult and, subject to Section [~~607 of the New~~  
2 ~~Mexico Uniform Securities Act~~] 58-13C-607 NMSA 1978, share  
3 records and information with the securities regulator of  
4 another state, Canada, a Canadian province or territory, a  
5 foreign jurisdiction, the securities and exchange commission,  
6 the United States department of justice, the commodity futures  
7 trading commission, the federal trade commission, the  
8 securities investor protection corporation, a self-regulatory  
9 organization, a national or international organization of  
10 securities regulators, a federal or state banking and insurance  
11 regulator and a governmental law enforcement agency to  
12 effectuate greater uniformity in securities matters among the  
13 federal government, self-regulatory organizations, states and  
14 foreign governments.

15 B. In cooperating, coordinating, consulting and  
16 sharing records and information pursuant to this section and in  
17 acting by rule, order or waiver pursuant to the New Mexico  
18 Uniform Securities Act, the director or attorney general shall,  
19 in the director's or attorney general's discretion, take into  
20 consideration in carrying out the public interest the following  
21 general policies:

22 (1) maximizing effectiveness of regulation for  
23 the protection of investors;

24 (2) maximizing uniformity in federal and state  
25 regulatory standards; and

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1 (3) minimizing burdens on the business of  
2 capital formation, without adversely affecting essentials of  
3 investor protection.

4 C. The cooperation, coordination, consultation and  
5 sharing of records and information authorized by this section  
6 includes:

7 (1) establishing or employing one or more  
8 designees as a central depository for registration and notice  
9 filings pursuant to the New Mexico Uniform Securities Act and  
10 for records required or allowed to be maintained pursuant to  
11 that act;

12 (2) developing and maintaining uniform forms;

13 (3) conducting a joint examination or  
14 investigation;

15 (4) holding a joint administrative hearing;

16 (5) instituting and prosecuting a joint civil  
17 or administrative proceeding;

18 (6) sharing and exchanging personnel;

19 (7) coordinating registrations pursuant to  
20 Sections [~~301 and 401 through 404 of the New Mexico Uniform~~  
21 ~~Securities Act~~] 58-13C-301 and 58-13C-401 through 58-13C-404  
22 NMSA 1978 and exemptions pursuant to Section [~~203 of that act~~]  
23 58-13C-203 NMSA 1978;

24 (8) sharing and exchanging records, subject to  
25 Section [~~607 of the New Mexico Uniform Securities Act~~]

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1 58-13C-607 NMSA 1978;

2 (9) formulating rules, statements of policy,  
3 guidelines, forms and interpretative opinions and releases;

4 (10) formulating common systems and  
5 procedures;

6 (11) notifying the public of proposed rules,  
7 forms, statements of policy and guidelines;

8 (12) attending conferences and other meetings  
9 among securities regulators, which may include representatives  
10 of governmental and private sector organizations involved in  
11 capital formation, deemed necessary or appropriate to promote  
12 or achieve uniformity; and

13 (13) developing and maintaining a uniform  
14 exemption from registration for small issuers and taking other  
15 steps to reduce the burden of raising investment capital by  
16 small businesses."

17 **SECTION 8. EFFECTIVE DATE.**--The effective date of the  
18 provisions of this act is July 1, 2011.

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SENATE BILL

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

ENDORSED BY THE INVESTMENTS OVERSIGHT COMMITTEE

AN ACT

RELATING TO PUBLIC FINANCES; AUTHORIZING THE STATE INVESTMENT COUNCIL TO CONTRACT FOR LEGAL SERVICES ON A CONTINGENT FEE BASIS; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** Section 6-8-7 NMSA 1978 (being Laws 1957, Chapter 179, Section 7, as amended) is amended to read:  
"6-8-7. POWERS AND DUTIES OF THE STATE INVESTMENT COUNCIL AND STATE INVESTMENT OFFICER--INVESTMENT POLICY--INVESTMENT MANAGERS.--

A. Subject to the limitations, conditions and restrictions contained in policymaking regulations or resolutions adopted by the council, the council may make purchases, sales, exchanges, investments and reinvestments of the assets of all funds in accordance with the Uniform Prudent

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1 Investor Act. The state investment officer and the council are  
2 trustees of all funds under their control and shall see that  
3 money invested is at all times handled in the best interests of  
4 the state. The council may delegate administrative functions  
5 to the state investment officer.

6 B. The state investment officer shall formulate and  
7 recommend to the council for approval investment regulations or  
8 resolutions pertaining to the kind or nature of investments and  
9 limitations, conditions and restrictions upon the methods,  
10 practices or procedures for investment, reinvestment, purchase,  
11 sale or exchange transactions that should govern the activities  
12 of the investment office.

13 C. The council shall meet at least once each month,  
14 and as often as exigencies may demand, to consult with the  
15 state investment officer concerning the work of the investment  
16 office. The council shall have access to all files and records  
17 of the investment office and shall require the state investment  
18 officer to report on and provide information necessary to the  
19 performance of council functions. The council may hire one or  
20 more investment management firms to advise the council with  
21 respect to the council's overall investment plan for the  
22 investment of all funds managed by the investment office and  
23 pay reasonable compensation for such advisory services from the  
24 assets of the applicable funds, subject to budgeting and  
25 appropriation by the legislature. The terms of any such

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1 investment management services contract shall incorporate the  
2 statutory requirements for investment of funds under the  
3 council's jurisdiction.

4 D. The council shall provide an opportunity for  
5 public comment at meetings of the council. Advance notice of  
6 meetings shall be published on the council's web site and in a  
7 newspaper of general circulation at least ten days in advance  
8 of the meeting.

9 E. All funds managed by the state investment  
10 officer shall be managed in accordance with the Uniform Prudent  
11 Investor Act. The council may employ investment management  
12 services to invest the funds and may pay reasonable  
13 compensation for investment management services from the assets  
14 of the applicable funds, subject to budgeting and appropriation  
15 by the legislature.

16 F. The council, the state investment officer, any  
17 person providing investment advice to the council or state  
18 investment officer for a fee or other compensation and all  
19 persons exercising discretionary authority or control of funds  
20 under the management of the council are fiduciaries.

21 G. The council may contract for legal services on a  
22 contingent fee basis, subject to a request for proposals  
23 process approved by the council.

24 [~~G.~~] H. The council may select and contract for the  
25 services of one or more custodian banks for all funds under the

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1 council's management. For the purpose of this subsection,  
2 "custodian bank" means a financial institution with the general  
3 fiduciary duties to manage, control and collect the assets of  
4 an investment fund, including receiving all deposits and paying  
5 all disbursements as directed by staff, safekeeping of assets,  
6 coordination of asset transfers, timely settlement of  
7 securities transactions and accurate and timely reporting of  
8 the assets by individual account and in total.

9 ~~[H.]~~ I. For funds available for investment for more  
10 than one year, the council may contract with any state agency  
11 to provide investment advisory or investment management  
12 services, separately or through a pooled investment fund,  
13 provided the state agency enters into a joint powers agreement  
14 with the council and that state agency pays at least the direct  
15 cost of such services. Notwithstanding any statutory provision  
16 governing state agency investments, the council may invest  
17 funds available from a state agency pursuant to a joint powers  
18 agreement in any type of investment permitted for the land  
19 grant permanent funds under the prudent investor rule. In  
20 performing investment services for a state agency, the council  
21 and the state investment officer are exempt from the New Mexico  
22 Uniform Securities Act. As used in this subsection, "state  
23 agency" means any branch, agency, department, board,  
24 instrumentality, institution or political subdivision of the  
25 state, the New Mexico finance authority, the New Mexico

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SENATE BILL

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

ENDORSED BY THE INVESTMENTS OVERSIGHT COMMITTEE

AN ACT

RELATING TO THE STATE INVESTMENT OFFICER; REMOVING THE STATE INVESTMENT OFFICER FROM MEMBERSHIP ON BOARDS OF THE NEW MEXICO FINANCE AUTHORITY, THE SMALL BUSINESS INVESTMENT CORPORATION AND THE NEW MEXICO RENEWABLE ENERGY TRANSMISSION AUTHORITY AND FROM THE EDUCATION TRUST BOARD.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 6-21-4 NMSA 1978 (being Laws 1992, Chapter 61, Section 4, as amended) is amended to read:

"6-21-4. NEW MEXICO FINANCE AUTHORITY CREATED-- MEMBERSHIP--QUALIFICATIONS--QUORUM--MEETINGS--COMPENSATION-- BOND.--

A. There is created a public body politic and corporate, separate and apart from the state, constituting a governmental instrumentality to be known as the "New Mexico

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1 finance authority" for the performance of essential public  
2 functions.

3 B. The authority shall be composed of [~~twelve~~  
4 eleven] members. The [~~state investment officer, the~~] secretary  
5 of finance and administration, the secretary of economic  
6 development, the secretary of energy, minerals and natural  
7 resources, the secretary of environment, the executive director  
8 of the New Mexico municipal league and the executive director  
9 of the New Mexico association of counties or their designees  
10 shall be ex-officio members of the authority with voting  
11 privileges. The governor, with the advice and consent of the  
12 senate, shall appoint to the authority the chief financial  
13 officer of a state higher educational institution and four  
14 members who are residents of the state. The appointed members  
15 shall serve at the pleasure of the governor.

16 C. The appointed members of the authority shall be  
17 appointed to four-year terms. The initial members shall be  
18 appointed to staggered terms of four years or less, so that the  
19 term of at least one member expires on January 1 of each year.  
20 Vacancies shall be filled by appointment by the governor for  
21 the remainder of the unexpired term. Any member of the  
22 authority shall be eligible for reappointment.

23 D. Each appointed member before entering upon [~~his~~]  
24 the member's duty shall take an oath of office to administer  
25 the duties of [~~his~~] the member's office faithfully and

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1 impartially. A record of the oath shall be filed in the office  
2 of the secretary of state.

3 E. The governor shall designate an appointed member  
4 of the authority to serve as [~~chairman~~] chair. The authority  
5 shall elect annually one of its members to serve as vice  
6 [~~chairman~~] chair. The authority shall appoint and prescribe  
7 the duties of such other officers, who need not be members, as  
8 the authority deems necessary or advisable, including chief  
9 executive officer and a secretary, who may be the same person.  
10 The authority may delegate to one or more of its members,  
11 officers, employees or agents such powers and duties as it may  
12 deem proper and consistent with the New Mexico Finance  
13 Authority Act.

14 F. The chief executive officer of the authority  
15 shall direct the affairs and business of the authority, subject  
16 to the policies, control and direction of the authority. The  
17 secretary of the authority shall keep a record of the  
18 proceedings of the authority and shall be custodian of all  
19 books, documents and papers filed with the authority, the  
20 minute book or journal of the authority and its official seal.  
21 The secretary shall make copies of all minutes and other  
22 records and documents of the authority and give certificates  
23 under the official seal of the authority to the effect that the  
24 copies are true copies, and all persons dealing with the  
25 authority may rely upon the certificates.

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1           G. Meetings of the authority shall be held at the  
2 call of the [~~chairman~~] chair or whenever three members shall so  
3 request in writing. A majority of members then serving  
4 constitutes a quorum for the transaction of any business. The  
5 affirmative vote of at least a majority of a quorum present  
6 shall be necessary for any action to be taken by the authority.  
7 An ex-officio member may designate in writing another person to  
8 attend meetings of the authority and to the same extent and  
9 with the same effect act in [~~his~~] the ex-officio member's  
10 stead. No vacancy in the membership of the authority shall  
11 impair the right of a quorum to exercise all rights and perform  
12 all duties of the authority.

13           H. Each member of the authority shall give bond as  
14 provided in the Surety Bond Act. All costs of the surety bonds  
15 shall be borne by the authority.

16           I. The authority is not created or organized, and  
17 its operations shall not be conducted, for the purpose of  
18 making a profit. No part of the revenues or assets of the  
19 authority shall benefit or be distributable to its members,  
20 officers or other private persons. The members of the  
21 authority shall receive no compensation for their services, but  
22 shall be reimbursed for actual and necessary expenses at the  
23 same rate and on the same basis as provided for public officers  
24 in the Per Diem and Mileage Act.

25           J. The authority shall not be subject to the

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1 supervision or control of any other board, bureau, department  
2 or agency of the state except as specifically provided in the  
3 New Mexico Finance Authority Act. No use of the terms "state  
4 agency" or "instrumentality" in any other law of the state  
5 shall be deemed to refer to the authority unless the authority  
6 is specifically referred to in the law.

7 K. The authority is a governmental instrumentality  
8 for purposes of the Tort Claims Act."

9 SECTION 2. Section 21-21K-4 NMSA 1978 (being Laws 1997,  
10 Chapter 259, Section 4) is amended to read:

11 "21-21K-4. BOARD CREATED--MEMBERS--APPOINTMENT--TERMS OF  
12 OFFICE--POWERS AND DUTIES.--

13 A. There is created the "education trust board".  
14 The board is administratively attached to the [commission]  
15 higher education department, and the [commission] department  
16 shall provide administrative support for the board in carrying  
17 out its duties pursuant to the Education Trust Act. The board  
18 shall consist of the following voting members:

19 (1) the [~~executive director of the commission~~  
20 ~~or his~~] secretary of higher education or the secretary's  
21 designee, who shall be the ex-officio chair of the board;

22 [~~(2) the state investment officer or his~~  
23 ~~designee;~~

24 ~~(3)~~ (2) one member appointed by the governor;

25 [~~(4)~~] (3) one member representing institutions

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1 of higher education, appointed by the speaker of the house of  
2 representatives; and

3 [~~(5)~~] (4) one member representing students at  
4 institutions of higher education, appointed by the president  
5 pro tempore of the senate.

6 B. The appointed members must possess knowledge,  
7 skill and experience in higher education, business or finance.

8 C. The appointed members shall serve six-year  
9 terms, with the exception of the member representing students,  
10 who shall be appointed for a two-year term. Vacancies on the  
11 board shall be filled by the respective appointing authority  
12 for the remainder of the vacating member's term.

13 D. Members of the board shall be subject to the  
14 provisions of the Per Diem and Mileage Act and shall receive no  
15 other compensation, perquisite or allowance for their service  
16 on the board.

17 E. The board is authorized to adopt and promulgate  
18 rules and regulations as necessary to carry out the provisions  
19 of the Education Trust Act, protect the financial integrity of  
20 the fund, preserve the program's benefits and [~~assure~~] ensure  
21 the appropriate use of the tax benefits. The board shall also  
22 determine and adopt by regulation the cost of attendance at  
23 institutions of higher education; provided that the cost of  
24 attendance shall include the same components and allowances as  
25 are used to determine cost of attendance for the federal

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1 student financial assistance programs."

2 SECTION 3. Section 58-29-5 NMSA 1978 (being Laws 2000,  
3 Chapter 97, Section 7, as amended) is amended to read:

4 "58-29-5. CORPORATION BOARD OF DIRECTORS--APPOINTMENT--  
5 POWERS.--

6 A. The corporation shall be governed by the board.  
7 The corporation's board of directors shall consist of:

8 (1) the state treasurer or [~~his~~] the state  
9 treasurer's designee; and

10 [~~(2) the state investment officer or his~~  
11 ~~designee;~~

12 ~~(3)]~~ (2) six members appointed by the  
13 governor.

14 B. Each director shall hold office for the length  
15 of [~~his~~] the director's term in office or until a successor is  
16 appointed or elected and begins service on the board.

17 C. The governor shall appoint, with the consent of  
18 the senate, the six public directors of the board who shall  
19 serve at the pleasure of the governor.

20 D. The governor's appointees to the board shall be  
21 public members who have general expertise in small business  
22 management, but they shall not be employed by or represent  
23 small businesses receiving equity investments from the  
24 corporation.

25 E. No two members of the board shall be employed by

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1 or represent the same company or institution.

2 F. The board shall annually elect a [~~chairman~~]  
3 chair from among its members and shall elect those other  
4 officers it determines necessary for the performance of its  
5 duties.

6 G. The power to set the policies and procedures for  
7 the corporation is vested in the board. The board may perform  
8 all acts necessary or appropriate to exercise that power.

9 H. Public members of the board shall be reimbursed  
10 for attending meetings of the board as provided in the Per Diem  
11 and Mileage Act and shall receive no other compensation,  
12 perquisite or allowance.

13 I. Public members of the board are appointed public  
14 officials of the state while carrying out their duties and  
15 activities under the Small Business Investment Act. The  
16 directors and the employees of the corporation are not liable  
17 personally, either jointly or severally, for any debt or  
18 obligation created or incurred by the corporation or for any  
19 act performed or obligation entered into in an official  
20 capacity when done in good faith, without intent to defraud and  
21 in connection with the administration, management or conduct of  
22 the corporation or affairs relating to it.

23 J. The board shall conduct an annual audit of the  
24 books of accounts, funds and securities of the corporation to  
25 be made by a competent and independent firm of certified public

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1 accountants. A copy of the audit report shall be filed with  
2 the president. The audit shall be open to the public for  
3 inspection."

4 SECTION 4. Section 62-16A-3 NMSA 1978 (being Laws 2007,  
5 Chapter 3, Section 3) is amended to read:

6 "62-16A-3. NEW MEXICO RENEWABLE ENERGY TRANSMISSION  
7 AUTHORITY CREATED--ORGANIZATION.--

8 A. The "New Mexico renewable energy transmission  
9 authority" is created as a public body, politic and corporate,  
10 separate and apart from the state, constituting a governmental  
11 instrumentality for the performance of essential public  
12 functions.

13 B. The authority shall be composed of [~~seven~~] six  
14 members as follows:

15 (1) three members appointed by the governor  
16 with the advice and consent of the senate. The initial  
17 appointees shall be appointed for staggered terms of one, two  
18 and three years; thereafter, the members shall be appointed for  
19 three-year terms;

20 [~~(2) the state investment officer or the state  
21 investment officer's designee;~~

22 ~~(3)]~~ (2) the state treasurer or the state  
23 treasurer's designee;

24 [~~(4)]~~ (3) one member appointed by the speaker  
25 of the house of representatives who shall serve at the pleasure

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1 of the speaker of the house; and

2 [~~(5)~~] (4) one member appointed by the  
3 president pro tempore of the senate who shall serve at the  
4 pleasure of the president pro tempore.

5 C. The qualifications of the members shall be as  
6 follows:

7 (1) one member appointed by the governor shall  
8 have expertise in financial matters involving the financing of  
9 major electrical transmission projects;

10 (2) the other four appointed members shall  
11 have:

12 (a) special knowledge of the public  
13 utility industry, as evidenced by college degrees or by  
14 experience, at least five years of which must be with the  
15 public utility industry; and

16 (b) knowledge of renewable energy  
17 development; and

18 (3) no member shall represent a person that  
19 owns or operates facilities.

20 D. The members initially appointed by the speaker  
21 of the house and the president pro tempore of the senate shall,  
22 by lot, determine one to have an initial term of two years and  
23 one to have an initial term of four years; thereafter, the  
24 appointments will be for staggered terms of four years.

25 E. In addition to the seven voting members, the

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1 secretary of energy, minerals and natural resources shall serve  
2 as an ex-officio nonvoting member of the authority.

3 F. The governor shall designate an appointed member  
4 of the authority to serve as chair, and the authority may elect  
5 annually such other officers as it deems necessary.

6 G. The authority shall meet at the call of the  
7 chair or whenever four members shall so request in writing. A  
8 majority of members then serving constitutes a quorum for the  
9 transaction of business, but the affirmative vote of at least  
10 four members is necessary for any action to be taken by the  
11 authority.

12 H. The authority is not created or organized, and  
13 its operations are not conducted, for the purpose of making a  
14 profit, but it is expected to recover the costs of operating  
15 the authority. No part of the revenues or assets of the  
16 authority shall benefit or be distributable to its members,  
17 officers or other private persons. The members of the  
18 authority shall receive no compensation for their services, but  
19 the public members shall be reimbursed for actual and necessary  
20 expenses at the same rate and on the same basis as provided for  
21 public officers in the Per Diem and Mileage Act.

22 I. The authority is not subject to the supervision  
23 or control of any other board, bureau, department or agency of  
24 the state except as specifically provided in the New Mexico  
25 Renewable Energy Transmission Authority Act. No use of the

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1 terms "state agency" or "instrumentality" in any other law of  
2 the state shall be deemed to refer to the authority unless the  
3 authority is specifically referred to in the law.

4 J. The authority is a governmental instrumentality  
5 for purposes of the Tort Claims Act."

6 SECTION 5. EFFECTIVE DATE.--The effective date of the  
7 provisions of this act is July 1, 2011.

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HOUSE BILL

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

ENDORSED BY THE INVESTMENTS OVERSIGHT COMMITTEE

AN ACT

RELATING TO PUBLIC FINANCES; CLARIFYING THE INVESTMENT  
STANDARDS FOR INVESTMENT OF THE TOBACCO SETTLEMENT PERMANENT  
FUND.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** Section 6-4-9 NMSA 1978 (being Laws 1999,  
Chapter 207, Section 1, as amended) is amended to read:

"6-4-9. TOBACCO SETTLEMENT PERMANENT FUND--INVESTMENT--  
DISTRIBUTION.--

A. The "tobacco settlement permanent fund" is  
created in the state treasury. The fund shall consist of money  
distributed to the state pursuant to the master settlement  
agreement entered into between tobacco product manufacturers  
and various states, including New Mexico, and executed November  
23, 1998 or any money released to the state from a qualified

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1 escrow fund or otherwise paid to the state as authorized by the  
2 model statute, Sections 6-4-12 and 6-4-13 NMSA 1978, enacted  
3 pursuant to the master settlement agreement. Money in the fund  
4 shall be invested by the state investment officer [~~as land~~  
5 ~~grant permanent funds are invested pursuant to Chapter 6,~~  
6 ~~Article 8 NMSA 1978~~] in accordance with the limitations in  
7 Article 12, Section 7 of the constitution of New Mexico.

8 Income from investment of the fund shall be credited to the  
9 fund. Money in the fund shall not be expended for any purpose,  
10 except as provided in this section.

11 B. In fiscal years 2003 through 2006, a  
12 distribution shall be made from the tobacco settlement  
13 permanent fund to the general fund in an amount equal to one  
14 hundred percent of the total amount of money distributed to the  
15 tobacco settlement permanent fund in that fiscal year.

16 C. In fiscal year 2007 and in each fiscal year  
17 thereafter, an annual distribution shall be made from the  
18 tobacco settlement permanent fund to the tobacco settlement  
19 program fund of an amount equal to fifty percent of the total  
20 amount of money distributed to the tobacco settlement permanent  
21 fund in that fiscal year until that amount is less than an  
22 amount equal to four and seven-tenths percent of the average of  
23 the year-end market values of the tobacco settlement permanent  
24 fund for the immediately preceding five calendar years.

25 Thereafter, the amount of the annual distribution shall be four

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1 and seven-tenths percent of the average of the year-end market  
2 values of the tobacco settlement permanent fund for the  
3 immediately preceding five calendar years. In the event that  
4 the actual amount distributed to the tobacco settlement program  
5 fund in a fiscal year is insufficient to meet appropriations  
6 from that fund for that fiscal year, the secretary of finance  
7 and administration shall proportionately reduce each  
8 appropriation accordingly.

9 D. In addition to the distribution made pursuant to  
10 Subsection C of this section, in fiscal year 2009, fiscal year  
11 2010 and fiscal year 2011, the remaining fifty percent of the  
12 total amount of money distributed to the tobacco settlement  
13 permanent fund in that fiscal year shall be distributed from  
14 the tobacco settlement permanent fund to the tobacco settlement  
15 program fund.

16 E. The tobacco settlement permanent fund shall be  
17 considered a reserve fund of the state and, as a reserve fund,  
18 may be expended in the event that general fund balances,  
19 including all authorized revenues and transfers to the general  
20 fund and balances in the general fund operating reserve, the  
21 appropriation contingency fund and the tax stabilization  
22 reserve, will not meet the level of appropriations authorized  
23 from the general fund for a fiscal year. In that event, in  
24 order to avoid an unconstitutional deficit, the legislature may  
25 authorize a transfer from the tobacco settlement permanent fund

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1 to the general fund but only in an amount necessary to meet  
2 general fund appropriations."

3 Section 2. EFFECTIVE DATE.--The effective date of the  
4 provisions of this act is July 1, 2011.

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HOUSE BILL

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

ENDORSED BY THE INVESTMENTS OVERSIGHT COMMITTEE

AN ACT

RELATING TO PUBLIC FINANCES; INCREASING THE STANDARD OF CARE  
FOR THE INVESTMENT OF THE WATER TRUST FUND.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 72-4A-8 NMSA 1978 (being Laws 2001,  
Chapter 164, Section 8) is amended to read:

"72-4A-8. WATER TRUST FUND--CREATED--INVESTMENT--  
DISTRIBUTION.--

A. The "water trust fund" is created in the state  
treasury. The fund shall consist of money appropriated,  
donated or otherwise accrued to the fund. Money in the fund  
shall be invested by the state investment officer [~~as land~~  
~~grant permanent funds are invested pursuant to Chapter 6,~~  
~~Article 8 NMSA 1978]~~ in accordance with the limitations in  
Article 12, Section 7 of the constitution of New Mexico.

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1 Earnings from investment of the fund shall be credited to the  
2 fund. Money in the fund shall not be expended for any purpose,  
3 but an annual distribution shall be made to the water project  
4 fund in accordance with Subsection B of this section.

5 B. On July 1 of fiscal year 2003 and on July 1 of  
6 each fiscal year thereafter, an annual distribution shall be  
7 made from the water trust fund to the water project fund in the  
8 amount of four million dollars (\$4,000,000) until that amount  
9 is less than an amount equal to four and seven-tenths percent  
10 of the average of the year-end market values of the water trust  
11 fund for the immediately preceding five calendar years.  
12 Thereafter, the amount of the annual distribution shall be four  
13 and seven-tenths percent of the average of the year-end market  
14 values of the water trust fund for the immediately preceding  
15 five calendar years."

16 **SECTION 2. CONTINGENT EFFECTIVE DATE.**--The provisions of  
17 this act shall become effective upon certification by the  
18 secretary of state that the constitution of New Mexico has been  
19 amended as proposed by a joint resolution of the fiftieth  
20 legislature, first session, entitled "A JOINT RESOLUTION  
21 PROPOSING TO AMEND ARTICLE 12, SECTION 7 AND ARTICLE 16,  
22 SECTION 6 OF THE CONSTITUTION OF NEW MEXICO TO INCREASE THE  
23 DUTY OF CARE IN INVESTMENT OF THE LAND GRANT PERMANENT FUNDS  
24 AND THE WATER TRUST FUND AND TO CHANGE THE LIMITATIONS ON  
25 INVESTMENT OF THE LAND GRANT PERMANENT FUNDS.".

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1 SENATE JOINT RESOLUTION

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

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10 A JOINT RESOLUTION

11 PROPOSING TO AMEND ARTICLE 12, SECTION 7 AND ARTICLE 16,  
12 SECTION 6 OF THE CONSTITUTION OF NEW MEXICO TO PRESERVE THE  
13 LAND GRANT PERMANENT FUNDS AND THE WATER TRUST FUND BY  
14 INCREASING THE DUTY OF CARE AND CHANGING THE LIMITATIONS ON  
15 INVESTMENT.

16  
17 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. It is proposed to amend Article 12, Section 7  
19 of the constitution of New Mexico to read:

20 "A. As used in this section, "fund" means the  
21 permanent school fund described in Article 12, Section 2 of  
22 this [~~article~~] constitution and all other permanent funds  
23 derived from lands granted or confirmed to the state by the act  
24 of congress of June 20, 1910, entitled "An act to enable the  
25 people of New Mexico to form a constitution and state

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1 government and be admitted into the union on an equal footing  
2 with the original states.".

3 B. The fund shall be invested by the state  
4 investment officer in accordance with policy regulations  
5 promulgated by the state investment council.

6 C. In making investments, the state investment  
7 officer, under the supervision of the state investment council,  
8 shall [~~exercise the judgment and care under the circumstances~~  
9 ~~then prevailing that businessmen of ordinary prudence,~~  
10 ~~discretion and intelligence exercise in the management of their~~  
11 ~~own affairs not in regard to speculation but in regard to the~~  
12 ~~permanent disposition of their funds, considering the probable~~  
13 ~~income as well as the probable safety of their capital]~~ invest  
14 and manage the fund in accordance with the Uniform Prudent  
15 Investor Act.

16 D. The legislature may establish criteria for  
17 investing the fund if the criteria are enacted by a  
18 three-fourths' vote of the members elected to each house, but  
19 investment of the fund is subject to the following  
20 restrictions:

21 (1) not more than sixty-five percent of the  
22 book value of the fund shall be invested at any given time in  
23 corporate stocks;

24 (2) not more than ten percent of the voting  
25 stock of a corporation shall be held;

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1 (3) stocks eligible for purchase shall be  
2 restricted to those stocks of businesses listed upon a national  
3 stock exchange or included in a nationally recognized list of  
4 stocks; and

5 (4) not more than [~~fifteen~~] twenty-five  
6 percent of the book value of the fund may be invested in  
7 international securities at any single time.

8 E. All additions to the fund and all earnings,  
9 including interest, dividends and capital gains from investment  
10 of the fund shall be credited to the fund.

11 F. Except as provided in Subsection G of this  
12 section, the annual distributions from the fund shall be five  
13 percent of the average of the year-end market values of the  
14 fund for the immediately preceding five calendar years.

15 G. In addition to the annual distribution made  
16 pursuant to Subsection F of this section, unless suspended  
17 pursuant to Subsection H of this section, an additional annual  
18 distribution shall be made pursuant to the following schedule;  
19 provided that no distribution shall be made pursuant to the  
20 provisions of this subsection in any fiscal year if the average  
21 of the year-end market values of the fund for the immediately  
22 preceding five calendar years is less than five billion eight  
23 hundred million dollars (\$5,800,000,000):

24 (1) in fiscal years 2005 through 2012, an  
25 amount equal to eight-tenths percent of the average of the

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1 year-end market values of the fund for the immediately  
2 preceding five calendar years; provided that any additional  
3 distribution from the permanent school fund pursuant to this  
4 paragraph shall be used to implement and maintain educational  
5 reforms as provided by law; and

6 (2) in fiscal years 2013 through 2016, an  
7 amount equal to one-half percent of the average of the year-end  
8 market values of the fund for the immediately preceding five  
9 calendar years; provided that any additional distribution from  
10 the permanent school fund pursuant to this paragraph shall be  
11 used to implement and maintain educational reforms as provided  
12 by law.

13 H. The legislature, by a three-fifths' vote of the  
14 members elected to each house, may suspend any additional  
15 distribution provided for in Subsection G of this section."

16 **SECTION 2.** It is proposed to amend Article 16, Section 6  
17 of the constitution of New Mexico to read:

18 "A. The "water trust fund" is created in the state  
19 treasury to conserve and protect the water resources of New  
20 Mexico and to ensure that New Mexico has the water it needs for  
21 a strong and vibrant future. The purpose of the fund shall be  
22 to secure a supply of clean and safe water for New Mexico's  
23 residents. The fund shall consist of money appropriated,  
24 donated or otherwise accrued to the fund. Money in the fund  
25 shall be invested by the state investment officer [~~as land~~

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1 ~~grant permanent funds are invested]~~ in accordance with the  
2 limitations in Article 12, Section 7 of the constitution of New  
3 Mexico, and there shall be strict accountability and oversight  
4 measures as provided by the state investment council to ensure  
5 appropriate safety of and return on investments. Earnings from  
6 investment of the fund shall be credited to the fund. Money in  
7 the fund shall not revert or be expended for any purpose, but  
8 an annual distribution shall be made to the water project fund,  
9 which shall be used only to support critically needed projects  
10 that preserve and protect New Mexico's water supply and is in  
11 accordance with Subsection B of this section.

12 B. On July 1, 2008 and each fiscal year thereafter,  
13 an annual distribution shall be made from the water trust fund  
14 pursuant to law, and that distribution shall then be  
15 appropriated by the legislature only for water projects  
16 consistent with a state water plan and as otherwise provided by  
17 law."

18 SECTION 3. The amendment proposed by this resolution  
19 shall be submitted to the people for their approval or  
20 rejection at the next general election or at any special  
21 election prior to that date that may be called for that  
22 purpose.

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SENATE BILL

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

AN ACT

RELATING TO PUBLIC EMPLOYEE RETIREMENT; INCREMENTALLY  
INCREASING THE EMPLOYER AND EMPLOYEE CONTRIBUTION RATES FOR  
CERTAIN RETIREMENT PLANS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 10-11-26.5 NMSA 1978 (being Laws 1994,  
Chapter 128, Section 6, as amended) is amended to read:

"10-11-26.5. STATE GENERAL MEMBER COVERAGE PLAN 3--MEMBER  
CONTRIBUTION RATE.--A member under state general member  
coverage plan 3 shall contribute [~~seven and forty-two~~  
~~hundredths percent~~] a percentage of salary [~~starting with the~~  
~~first full pay period that ends within the calendar month in~~  
~~which state general member coverage plan 3 becomes applicable~~  
~~to the member~~] pursuant to the following schedule:

A. through June 30, 2011, the member contribution

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1 rate shall be seven and forty-two hundredths percent of salary,  
2 except that, from July 1, 2009 through June 30, 2011, for  
3 members whose annual salary is greater than twenty thousand  
4 dollars (\$20,000), the member contribution rate shall be eight  
5 and ninety-two hundredths percent of salary;

6 B. from July 1, 2011 through June 30, 2012, the  
7 member contribution rate shall be eight and nine-hundredths  
8 percent of salary;

9 C. from July 1, 2012 through June 30, 2013, the  
10 member contribution rate shall be eight and seventy-six  
11 hundredths percent of salary;

12 D. from July 1, 2013 through June 30, 2014, the  
13 member contribution rate shall be nine and forty-three  
14 hundredths percent of salary; and

15 E. on and after July 1, 2014, the member  
16 contribution rate shall be ten and nine-hundredths percent of  
17 salary."

18 SECTION 2. Section 10-11-26.6 NMSA 1978 (being Laws 1994,  
19 Chapter 128, Section 7, as amended) is amended to read:

20 "10-11-26.6. STATE GENERAL MEMBER COVERAGE PLAN 3--STATE  
21 CONTRIBUTION RATE.--The state shall contribute [~~sixteen and~~  
22 ~~fifty-nine hundredths percent~~] a percentage of the salary of  
23 each member covered by state general member coverage plan 3  
24 [~~starting with the first pay period that ends within the~~  
25 ~~calendar month in which state general member coverage plan 3~~

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1 ~~becomes applicable to the member]~~ pursuant to the following  
2 schedule:

3 A. through June 30, 2011, the state contribution  
4 rate shall be sixteen and fifty-nine hundredths percent of the  
5 salary of each member, except that, from July 1, 2009 through  
6 June 30, 2011, for members whose annual salary is greater than  
7 twenty thousand dollars (\$20,000), the state contribution rate  
8 shall be fifteen and nine-hundredths percent of the salary of  
9 each member;

10 B. from July 1, 2011 through June 30, 2012, the  
11 state contribution rate shall be seventeen and ninety-two  
12 hundredths percent of the salary of each member;

13 C. from July 1, 2012 through June 30, 2013, the  
14 state contribution rate shall be nineteen and twenty-five  
15 hundredths percent of the salary of each member;

16 D. from July 1, 2013 through June 30, 2014, the  
17 state contribution rate shall be twenty and fifty-eight  
18 hundredths percent of the salary of each member; and

19 E. on and after July 1, 2014, the state  
20 contribution rate shall be twenty-one and ninety-two hundredths  
21 percent of the salary of each member."

22 SECTION 3. Section 10-11-60 NMSA 1978 (being Laws 1987,  
23 Chapter 253, Section 60) is amended to read:

24 "10-11-60. MUNICIPAL POLICE MEMBER COVERAGE PLAN 1--  
25 MEMBER CONTRIBUTION RATE.--A member under municipal police

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1 member coverage plan 1 shall contribute [~~seven percent~~] a  
2 percentage of salary pursuant to the following schedule:

3 A. through June 30, 2011, the member contribution  
4 rate shall be seven percent of salary;

5 B. from July 1, 2011 through June 30, 2012, the  
6 member contribution rate shall be seven and sixty-seven  
7 hundredths percent of salary;

8 C. from July 1, 2012 through June 30, 2013, the  
9 member contribution rate shall be eight and thirty-four  
10 hundredths percent of salary;

11 D. from July 1, 2013 through June 30, 2014, the  
12 member contribution rate shall be nine and one-hundredth  
13 percent of salary; and

14 E. on and after July 1, 2014, the member  
15 contribution rate shall be nine and sixty-seven hundredths  
16 percent of salary."

17 SECTION 4. Section 10-11-61 NMSA 1978 (being Laws 1987,  
18 Chapter 253, Section 61) is amended to read:

19 "10-11-61. MUNICIPAL POLICE MEMBER COVERAGE PLAN 1--  
20 AFFILIATED PUBLIC EMPLOYER CONTRIBUTION RATE.--The affiliated  
21 public employer shall contribute [~~ten percent~~] a percentage of  
22 the salary of each member [~~which~~] who it employs and who is  
23 covered under municipal police member coverage plan 1 pursuant  
24 to the following schedule:

25 A. through June 30, 2011, the contribution rate

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1 shall be ten percent of the salary of each member;

2 B. from July 1, 2011 through June 30, 2012, the  
3 contribution rate shall be eleven and thirty-three hundredths  
4 percent of the salary of each member;

5 C. from July 1, 2012 through June 30, 2013, the  
6 contribution rate shall be twelve and sixty-six hundredths  
7 percent of the salary of each member;

8 D. from July 1, 2013 through June 30, 2014, the  
9 contribution rate shall be thirteen and ninety-nine hundredths  
10 percent of the salary of each member; and

11 E. on and after July 1, 2014, the contribution rate  
12 shall be fifteen and thirty-three hundredths percent of the  
13 salary of each member."

14 SECTION 5. Section 10-11-66 NMSA 1978 (being Laws 1987,  
15 Chapter 253, Section 66) is amended to read:

16 "10-11-66. MUNICIPAL POLICE MEMBER COVERAGE PLAN 2--  
17 MEMBER CONTRIBUTION RATE.--A member under municipal police  
18 member coverage plan 2 shall contribute [~~seven percent~~] a  
19 percentage of salary pursuant to the following schedule:

20 A. through June 30, 2011, the member contribution  
21 rate shall be seven percent of salary;

22 B. from July 1, 2011 through June 30, 2012, the  
23 member contribution rate shall be seven and sixty-seven  
24 hundredths percent of salary;

25 C. from July 1, 2012 through June 30, 2013, the

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1 member contribution rate shall be eight and thirty-four  
2 hundredths percent of salary;

3 D. from July 1, 2013 through June 30, 2014, the  
4 member contribution rate shall be nine and one-hundredth  
5 percent of salary; and

6 E. on and after July 1, 2014, the member  
7 contribution rate shall be nine and sixty-seven hundredths  
8 percent of salary."

9 SECTION 6. Section 10-11-67 NMSA 1978 (being Laws 1987,  
10 Chapter 253, Section 67) is amended to read:

11 "10-11-67. MUNICIPAL POLICE MEMBER COVERAGE PLAN 2--  
12 AFFILIATED PUBLIC EMPLOYER CONTRIBUTION RATE.--The affiliated  
13 public employer shall contribute [~~fifteen percent~~] a percentage  
14 of the salary of each member [which] who it employs and who is  
15 covered under municipal police member coverage plan 2 pursuant  
16 to the following schedule:

17 A. through June 30, 2011, the contribution rate  
18 shall be fifteen percent of the salary of each member;

19 B. from July 1, 2011 through June 30, 2012, the  
20 contribution rate shall be sixteen and thirty-three hundredths  
21 percent of the salary of each member;

22 C. from July 1, 2012 through June 30, 2013, the  
23 contribution rate shall be seventeen and sixty-six hundredths  
24 percent of the salary of each member;

25 D. from July 1, 2013 through June 30, 2014, the

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1 contribution rate shall be eighteen and ninety-nine hundredths  
2 percent of the salary of each member; and

3 E. on and after July 1, 2014, the contribution rate  
4 shall be twenty and thirty-three hundredths percent of the  
5 salary of each member."

6 SECTION 7. Section 10-11-72 NMSA 1978 (being Laws 1987,  
7 Chapter 253, Section 72) is amended to read:

8 "10-11-72. MUNICIPAL POLICE MEMBER COVERAGE PLAN 3--  
9 MEMBER CONTRIBUTION RATE.--A member under municipal police  
10 member coverage plan 3 shall contribute [~~seven percent~~] a  
11 percentage of salary pursuant to the following schedule:

12 A. through June 30, 2011, the member contribution  
13 rate shall be seven percent of salary;

14 B. from July 1, 2011 through June 30, 2012, the  
15 member contribution rate shall be seven and sixty-seven  
16 hundredths percent of salary;

17 C. from July 1, 2012 through June 30, 2013, the  
18 member contribution rate shall be eight and thirty-four  
19 hundredths percent of salary;

20 D. from July 1, 2013 through June 30, 2014, the  
21 member contribution rate shall be nine and one-hundredth  
22 percent of salary; and

23 E. on and after July 1, 2014, the member  
24 contribution rate shall be nine and sixty-seven hundredths  
25 percent of salary."

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1           SECTION 8. Section 10-11-73 NMSA 1978 (being Laws 1987,  
2 Chapter 253, Section 73) is amended to read:

3           "10-11-73. MUNICIPAL POLICE MEMBER COVERAGE PLAN 3--  
4 AFFILIATED PUBLIC EMPLOYER CONTRIBUTION RATE.--The affiliated  
5 public employer shall contribute [~~eighteen and one-half~~  
6 ~~percent~~] a percentage of the salary of each member [~~which~~] who  
7 it employs and who is covered under coverage municipal police  
8 member coverage plan 3 pursuant to the following schedule:

9           A. through June 30, 2011, the contribution rate  
10 shall be eighteen and one-half percent of the salary of each  
11 member;

12           B. from July 1, 2011 through June 30, 2012, the  
13 contribution rate shall be nineteen and eighty-three hundredths  
14 percent of the salary of each member;

15           C. from July 1, 2012 through June 30, 2013, the  
16 contribution rate shall be twenty-one and sixteen-hundredths  
17 percent of the salary of each member;

18           D. from July 1, 2013 through June 30, 2014, the  
19 contribution rate shall be twenty-two and forty-nine hundredths  
20 percent of the salary of each member; and

21           E. on and after July 1, 2014, the contribution rate  
22 shall be twenty-three and eighty-three hundredths percent of  
23 the salary of each member."

24           SECTION 9. Section 10-11-78 NMSA 1978 (being Laws 1987,  
25 Chapter 253, Section 78) is amended to read:

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1 "10-11-78. MUNICIPAL POLICE MEMBER COVERAGE PLAN 4--  
2 MEMBER CONTRIBUTION RATE.--A member under municipal police  
3 member coverage plan 4 shall contribute [~~twelve and thirty-five~~  
4 ~~one-hundredths percent~~] a percentage of salary starting with  
5 the first full pay period in the calendar month in which  
6 municipal police member coverage plan 4 becomes applicable to  
7 the member pursuant to the following schedule:

8 A. through June 30, 2011, the member contribution  
9 rate shall be twelve and thirty-five hundredths percent of  
10 salary;

11 B. from July 1, 2011 through June 30, 2012, the  
12 member contribution rate shall be thirteen and two-hundredths  
13 percent of salary;

14 C. from July 1, 2012 through June 30, 2013, the  
15 member contribution rate shall be thirteen and sixty-nine  
16 hundredths percent of salary;

17 D. from July 1, 2013 through June 30, 2014, the  
18 member contribution rate shall be fourteen and thirty-six  
19 hundredths percent of salary; and

20 E. on and after July 1, 2014, the member  
21 contribution rate shall be fifteen and two-hundredths percent  
22 of salary."

23 SECTION 10. Section 10-11-79 NMSA 1978 (being Laws 1987,  
24 Chapter 253, Section 79) is amended to read:

25 "10-11-79. MUNICIPAL POLICE MEMBER COVERAGE PLAN 4--

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1 AFFILIATED PUBLIC EMPLOYER CONTRIBUTION RATE.--The affiliated  
2 public employer shall contribute [~~eighteen and one-half~~  
3 ~~percent~~] a percentage of the salary of each member [~~which~~] who  
4 it employs and who is covered under municipal police member  
5 coverage plan 4 pursuant to the following schedule:

6 A. through June 30, 2011, the contribution rate  
7 shall be eighteen and one-half percent of the salary of each  
8 member;

9 B. from July 1, 2011 through June 30, 2012, the  
10 contribution rate shall be nineteen and eighty-three hundredths  
11 percent of the salary of each member;

12 C. from July 1, 2012 through June 30, 2013, the  
13 contribution rate shall be twenty-one and sixteen-hundredths  
14 percent of the salary of each member;

15 D. from July 1, 2013 through June 30, 2014, the  
16 contribution rate shall be twenty-two and forty-nine hundredths  
17 percent of the salary of each member; and

18 E. on and after July 1, 2014, the contribution rate  
19 shall be twenty-three and eighty-three hundredths percent of  
20 the salary of each member."

21 SECTION 11. Section 10-11-84 NMSA 1978 (being Laws 1987,  
22 Chapter 253, Section 84) is amended to read:

23 "10-11-84. MUNICIPAL POLICE MEMBER COVERAGE PLAN 5--  
24 MEMBER CONTRIBUTION RATE.--A member under municipal police  
25 member coverage plan 5 shall contribute [~~sixteen and three-~~

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1 ~~tenths percent]~~ a percentage of salary starting with the first  
2 full pay period in the calendar month in which municipal police  
3 member coverage plan 5 becomes applicable to the member  
4 pursuant to the following schedule:

5 A. through June 30, 2011, the member contribution  
6 rate shall be sixteen and three-tenths percent of salary;

7 B. from July 1, 2011 through June 30, 2012, the  
8 member contribution rate shall be sixteen and ninety-seven  
9 hundredths percent of salary;

10 C. from July 1, 2012 through June 30, 2013, the  
11 member contribution rate shall be seventeen and sixty-four  
12 hundredths percent of salary;

13 D. from July 1, 2013 through June 30, 2014, the  
14 member contribution rate shall be eighteen and thirty-one  
15 hundredths percent of salary; and

16 E. on and after July 1, 2014, the member  
17 contribution rate shall be eighteen and ninety-seven hundredths  
18 percent of salary."

19 SECTION 12. Section 10-11-85 NMSA 1978 (being Laws 1987,  
20 Chapter 253, Section 85) is amended to read:

21 "10-11-85. MUNICIPAL POLICE MEMBER COVERAGE PLAN 5--  
22 AFFILIATED PUBLIC EMPLOYER CONTRIBUTION RATE.--The affiliated  
23 public employer shall contribute [~~eighteen and one-half~~  
24 ~~percent]~~ a percentage of the salary of each member [~~which]~~ who  
25 it employs and who is covered under municipal police member

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1 coverage plan 5 pursuant to the following schedule:

2 A. through June 30, 2011, the contribution rate  
3 shall be eighteen and one-half percent of the salary of each  
4 member;

5 B. from July 1, 2011 through June 30, 2012, the  
6 contribution rate shall be nineteen and eighty-three hundredths  
7 percent of the salary of each member;

8 C. from July 1, 2012 through June 30, 2013, the  
9 contribution rate shall be twenty-one and sixteen-hundredths  
10 percent of the salary of each member;

11 D. from July 1, 2013 through June 30, 2014, the  
12 contribution rate shall be twenty-two and forty-nine hundredths  
13 percent of the salary of each member; and

14 E. on and after July 1, 2014, the contribution rate  
15 shall be twenty-three and eighty-three hundredths percent of  
16 the salary of each member."

17 SECTION 13. Section 10-11-90 NMSA 1978 (being Laws 1987,  
18 Chapter 253, Section 90, as amended) is amended to read:

19 "10-11-90. MUNICIPAL FIRE MEMBER COVERAGE PLAN 1--MEMBER  
20 CONTRIBUTION RATE.--A member under municipal fire member  
21 coverage plan 1 shall contribute [~~eight percent~~] a percentage  
22 of salary pursuant to the following schedule:

23 A. through June 30, 2011, the member contribution  
24 rate shall be eight percent of salary;

25 B. from July 1, 2011 through June 30, 2012, the

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1 member contribution rate shall be eight and sixty-seven  
2 hundredths percent of salary;

3 C. from July 1, 2012 through June 30, 2013, the  
4 member contribution rate shall be nine and thirty-four  
5 hundredths percent of salary;

6 D. from July 1, 2013 through June 30, 2014, the  
7 member contribution rate shall be ten and one-hundredth percent  
8 of salary; and

9 E. on and after July 1, 2014, the member  
10 contribution rate shall be ten and sixty-seven hundredths  
11 percent of salary."

12 SECTION 14. Section 10-11-91 NMSA 1978 (being Laws 1987,  
13 Chapter 253, Section 91, as amended) is amended to read:

14 "10-11-91. MUNICIPAL FIRE MEMBER COVERAGE PLAN 1--  
15 AFFILIATED PUBLIC EMPLOYER CONTRIBUTION RATE.--The affiliated  
16 public employer shall contribute [~~eleven percent~~] a percentage  
17 of the salary of each member whom it employs and covers under  
18 municipal fire member coverage plan 1 pursuant to the following  
19 schedule:

20 A. through June 30, 2011, the contribution rate  
21 shall be eleven percent of the salary of each member;

22 B. from July 1, 2011 through June 30, 2012, the  
23 contribution rate shall be twelve and thirty-three hundredths  
24 percent of the salary of each member;

25 C. from July 1, 2012 through June 30, 2013, the

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1 contribution rate shall be thirteen and sixty-six hundredths  
2 percent of the salary of each member;

3 D. from July 1, 2013 through June 30, 2014, the  
4 contribution rate shall be fourteen and ninety-nine hundredths  
5 percent of the salary of each member; and

6 E. on and after July 1, 2014, the contribution rate  
7 shall be sixteen and thirty-three hundredths percent of the  
8 salary of each member."

9 SECTION 15. Section 10-11-96 NMSA 1978 (being Laws 1987,  
10 Chapter 253, Section 96, as amended) is amended to read:

11 "10-11-96. MUNICIPAL FIRE MEMBER COVERAGE PLAN 2--MEMBER  
12 CONTRIBUTION RATE.--A member under municipal fire member  
13 coverage plan 2 shall contribute [~~eight percent~~] a percentage  
14 of salary pursuant to the following schedule:

15 A. through June 30, 2011, the member contribution  
16 rate shall be eight percent of salary;

17 B. from July 1, 2011 through June 30, 2012, the  
18 member contribution rate shall be eight and sixty-seven  
19 hundredths percent of salary;

20 C. from July 1, 2012 through June 30, 2013, the  
21 member contribution rate shall be nine and thirty-four  
22 hundredths percent of salary;

23 D. from July 1, 2013 through June 30, 2014, the  
24 member contribution rate shall be ten and one-hundredth percent  
25 of salary; and

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1                   E. on and after July 1, 2014, the member  
2                   contribution rate shall be ten and sixty-seven hundredths  
3                   percent of salary."

4                   SECTION 16. Section 10-11-97 NMSA 1978 (being Laws 1987,  
5 Chapter 253, Section 97, as amended) is amended to read:

6                   "10-11-97. MUNICIPAL FIRE MEMBER COVERAGE PLAN 2--  
7 AFFILIATED PUBLIC EMPLOYER CONTRIBUTION RATE.--The affiliated  
8 public employer shall contribute [~~seventeen and one-half~~  
9 ~~percent~~] a percentage of the salary of each member whom it  
10 employs and covers under municipal fire member coverage plan 2  
11 pursuant to the following schedule:

12                   A. through June 30, 2011, the contribution rate  
13 shall be seventeen and one-half percent of the salary of each  
14 member;

15                   B. from July 1, 2011 through June 30, 2012, the  
16 contribution rate shall be eighteen and eighty-three hundredths  
17 percent of the salary of each member;

18                   C. from July 1, 2012 through June 30, 2013, the  
19 contribution rate shall be twenty and sixteen-hundredths  
20 percent of the salary of each member;

21                   D. from July 1, 2013 through June 30, 2014, the  
22 contribution rate shall be twenty-one and forty-nine hundredths  
23 percent of the salary of each member; and

24                   E. on and after July 1, 2014, the contribution rate  
25 shall be twenty-two and eighty-three hundredths percent of the

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1 salary of each member."

2 SECTION 17. Section 10-11-102 NMSA 1978 (being Laws 1987,  
3 Chapter 253, Section 102, as amended) is amended to read:

4 "10-11-102. MUNICIPAL FIRE MEMBER COVERAGE PLAN 3--MEMBER  
5 CONTRIBUTION RATE.--A member under municipal fire member  
6 coverage plan 3 shall contribute [~~eight percent~~] a percentage  
7 of salary pursuant to the following schedule:

8 A. through June 30, 2011, the member contribution  
9 rate shall be eight percent of salary;

10 B. from July 1, 2011 through June 30, 2012, the  
11 member contribution rate shall be eight and sixty-seven  
12 hundredths percent of salary;

13 C. from July 1, 2012 through June 30, 2013, the  
14 member contribution rate shall be nine and thirty-four  
15 hundredths percent of salary;

16 D. from July 1, 2013 through June 30, 2014, the  
17 member contribution rate shall be ten and one-hundredth percent  
18 of salary; and

19 E. on and after July 1, 2014, the member  
20 contribution rate shall be ten and sixty-seven hundredths  
21 percent of salary."

22 SECTION 18. Section 10-11-103 NMSA 1978 (being Laws 1987,  
23 Chapter 253, Section 103, as amended) is amended to read:

24 "10-11-103. MUNICIPAL FIRE MEMBER COVERAGE PLAN 3--  
25 AFFILIATED PUBLIC EMPLOYER CONTRIBUTION RATE.--The affiliated

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1 public employer shall contribute [~~twenty-one and twenty-five~~  
2 ~~one-hundredths percent~~] a percentage of the salary of each  
3 member whom it employs and covers under municipal fire member  
4 coverage plan 3 pursuant to the following schedule:

5 A. through June 30, 2011, the contribution rate  
6 shall be twenty-one and twenty-five hundredths percent of the  
7 salary of each member;

8 B. from July 1, 2011 through June 30, 2012, the  
9 contribution rate shall be twenty-two and fifty-eight  
10 hundredths percent of the salary of each member;

11 C. from July 1, 2012 through June 30, 2013, the  
12 contribution rate shall be twenty-three and ninety-one  
13 hundredths percent of the salary of each member;

14 D. from July 1, 2013 through June 30, 2014, the  
15 contribution rate shall be twenty-five and twenty-four  
16 hundredths percent of the salary of each member; and

17 E. on and after July 1, 2014, the contribution rate  
18 shall be twenty-six and fifty-eight hundredths percent of the  
19 salary of each member."

20 SECTION 19. Section 10-11-108 NMSA 1978 (being Laws 1987,  
21 Chapter 253, Section 108, as amended) is amended to read:

22 "10-11-108. MUNICIPAL FIRE MEMBER COVERAGE PLAN 4--MEMBER  
23 CONTRIBUTION RATE.--A member under municipal fire member  
24 coverage plan 4 shall contribute [~~twelve and eight-tenths~~  
25 ~~percent~~] a percentage of salary pursuant to the following

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1 schedule:

2 A. through June 30, 2011, the member contribution  
3 rate shall be twelve and eight-tenths percent of salary;

4 B. from July 1, 2011 through June 30, 2012, the  
5 member contribution rate shall be thirteen and forty-seven  
6 hundredths percent of salary;

7 C. from July 1, 2012 through June 30, 2013, the  
8 member contribution rate shall be fourteen and fourteen-  
9 hundredths percent of salary;

10 D. from July 1, 2013 through June 30, 2014, the  
11 member contribution rate shall be fourteen and eighty-one  
12 hundredths percent of salary; and

13 E. on and after July 1, 2014, the member  
14 contribution rate shall be fifteen and forty-seven hundredths  
15 percent of salary."

16 SECTION 20. Section 10-11-109 NMSA 1978 (being Laws 1987,  
17 Chapter 253, Section 109, as amended) is amended to read:

18 "10-11-109. MUNICIPAL FIRE MEMBER COVERAGE PLAN 4--  
19 AFFILIATED PUBLIC EMPLOYER CONTRIBUTION RATE.--The affiliated  
20 public employer shall contribute [~~twenty-one and twenty-five~~  
21 ~~one-hundredths percent~~] a percentage of the salary of each  
22 member whom it employs and covers under municipal fire member  
23 coverage plan 4 pursuant to the following schedule:

24 A. through June 30, 2011, the contribution rate  
25 shall be twenty-one and twenty-five hundredths percent of the

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1 salary of each member;

2 B. from July 1, 2011 through June 30, 2012, the  
3 contribution rate shall be twenty-two and fifty-eight  
4 hundredths percent of the salary of each member;

5 C. from July 1, 2012 through June 30, 2013, the  
6 contribution rate shall be twenty-three and ninety-one  
7 hundredths percent of the salary of each member;

8 D. from July 1, 2013 through June 30, 2014, the  
9 contribution rate shall be twenty-five and twenty-four  
10 hundredths percent of the salary of each member; and

11 E. on and after July 1, 2014, the contribution rate  
12 shall be twenty-six and fifty-eight hundredths percent of the  
13 salary of each member."

14 SECTION 21. Section 10-11-114 NMSA 1978 (being Laws 1987,  
15 Chapter 253, Section 114, as amended) is amended to read:

16 "10-11-114. MUNICIPAL FIRE MEMBER COVERAGE PLAN 5--MEMBER  
17 CONTRIBUTION RATE.--A member under municipal fire member  
18 coverage plan 5 shall contribute [~~sixteen and two-tenths~~  
19 ~~percent~~] a percentage of salary pursuant to the following  
20 schedule:

21 A. through June 30, 2011, the member contribution  
22 rate shall be sixteen and two-tenths percent of salary;

23 B. from July 1, 2011 through June 30, 2012, the  
24 member contribution rate shall be sixteen and eighty-seven  
25 hundredths percent of salary;

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1           C. from July 1, 2012 through June 30, 2013, the  
2 member contribution rate shall be seventeen and fifty-four  
3 hundredths percent of salary;

4           D. from July 1, 2013 through June 30, 2014, the  
5 member contribution rate shall be eighteen and twenty-one  
6 hundredths percent of salary; and

7           E. on and after July 1, 2014, the member  
8 contribution rate shall be eighteen and eighty-seven hundredths  
9 percent of salary."

10           SECTION 22. Section 10-11-115 NMSA 1978 (being Laws 1987,  
11 Chapter 253, Section 115, as amended) is amended to read:

12           "10-11-115. MUNICIPAL FIRE MEMBER COVERAGE PLAN 5--  
13 AFFILIATED PUBLIC EMPLOYER CONTRIBUTION RATE.--The affiliated  
14 public employer shall contribute [~~twenty-one and twenty-five~~  
15 ~~one-hundredths percent~~] a percentage of the salary of each  
16 member whom it employs and covers under municipal fire member  
17 coverage plan 5 pursuant to the following schedule:

18           A. through June 30, 2011, the contribution rate  
19 shall be twenty-one and twenty-five hundredths percent of the  
20 salary of each member;

21           B. from July 1, 2011 through June 30, 2012, the  
22 contribution rate shall be twenty-two and fifty-eight  
23 hundredths percent of the salary of each member;

24           C. from July 1, 2012 through June 30, 2013, the  
25 contribution rate shall be twenty-three and ninety-one

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1 hundredths percent of the salary of each member;

2 D. from July 1, 2013 through June 30, 2014, the  
3 contribution rate shall be twenty-five and twenty-four  
4 hundredths percent of the salary of each member; and

5 E. on and after July 1, 2014, the contribution rate  
6 shall be twenty-six and fifty-eight hundredths percent of the  
7 salary of each member."

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SENATE BILL

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

AN ACT

RELATING TO PUBLIC EMPLOYEE RETIREMENT; INCREMENTALLY  
INCREASING THE EMPLOYER AND EMPLOYEE CONTRIBUTION RATES IN THE  
JUDICIAL RETIREMENT ACT AND THE MAGISTRATE RETIREMENT ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 10-12B-10 NMSA 1978 (being Laws 1992,  
Chapter 111, Section 10, as amended) is amended to read:

"10-12B-10. MEMBER CONTRIBUTIONS--TAX TREATMENT.--

A. Members, while in office, shall contribute to  
the member contribution fund pursuant to the following  
schedule:

(1) prior to July 1, 2005, five and one-half  
percent of salary;

(2) from July 1, 2005 through June 30, 2006,  
six and one-half percent of salary; [~~and~~]

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1 (3) ~~[on and after]~~ from July 1, 2006 through  
2 June 30, 2011, seven and one-half percent of salary, except  
3 that, from July 1, 2009 through June 30, 2011, for members  
4 whose annual salary is greater than twenty thousand dollars  
5 (\$20,000), the member contribution rate shall be nine percent  
6 of salary;

7 (4) from July 1, 2011 through June 30, 2012,  
8 eight and seventeen-hundredths percent of salary;

9 (5) from July 1, 2012 through June 30, 2013,  
10 eight and eighty-four hundredths percent of salary;

11 (6) from July 1, 2013 through June 30, 2014,  
12 nine and fifty-one hundredths percent of salary; and

13 (7) on and after July 1, 2014, ten and  
14 seventeen-hundredths percent of salary.

15 B. Upon implementation, the state, acting as  
16 employer of members covered pursuant to the provisions of the  
17 Judicial Retirement Act, shall, solely for the purpose of  
18 compliance with Section 414(h) of the Internal Revenue Code of  
19 1986, pick up for the purposes specified in that section member  
20 contributions required by this section for all annual salary  
21 earned by the member. Member contributions picked up pursuant  
22 to the provisions of this section shall be treated as employer  
23 contributions for purposes of determining income tax  
24 obligations under the Internal Revenue Code of 1986; however,  
25 such picked-up member contributions shall be included in the

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1 determination of the member's gross annual salary for all other  
2 purposes under federal and state laws. Member contributions  
3 picked up pursuant to the provisions of this section shall  
4 continue to be designated member contributions for all purposes  
5 of the Judicial Retirement Act and shall be considered as part  
6 of the member's annual salary for purposes of determining the  
7 amount of the member's contribution. The provisions of this  
8 section are mandatory, and the member shall have no option  
9 concerning the pickup or concerning the receipt of the  
10 contributed amounts directly instead of having the amounts paid  
11 by the employer to the retirement system. Implementation  
12 occurs upon authorization by the board. In no event may  
13 implementation occur other than at the beginning of a pay  
14 period applicable to the member."

15 SECTION 2. Section 10-12B-11 NMSA 1978 (being Laws 1992,  
16 Chapter 111, Section 11, as amended) is amended to read:

17 "10-12B-11. EMPLOYER CONTRIBUTIONS.--

18 A. The member's court shall contribute the  
19 following amounts to the fund:

20 (1) prior to July 1, 2005, nine percent of  
21 salary for each member in office;

22 (2) from July 1, 2005 through June 30, 2006,  
23 ten and one-half percent of salary for each member in office;

24 [~~and~~]

25 (3) [~~on and after~~] from July 1, 2006 through

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1 June 30, 2011, twelve percent of salary for each member in  
2 office, except that, from July 1, 2009 through June 30, 2011,  
3 for members whose annual salary is greater than twenty thousand  
4 dollars (\$20,000), the member's court contribution rate shall  
5 be ten and one-half percent of salary for each member in  
6 office;

7 (4) from July 1, 2011 through June 30, 2012,  
8 thirteen and thirty-three hundredths percent of salary for each  
9 member in office;

10 (5) from July 1, 2012 through June 30, 2013,  
11 fourteen and sixty-six hundredths percent of salary for each  
12 member in office;

13 (6) from July 1, 2013 through June 30, 2014,  
14 fifteen and ninety-nine hundredths percent of salary for each  
15 member in office; and

16 (7) on and after July 1, 2014, seventeen and  
17 thirty-three hundredths percent of salary for each member in  
18 office.

19 B. Thirty-eight dollars (\$38.00) from each civil  
20 case docket fee paid in the district court, twenty-five dollars  
21 (\$25.00) from each civil docket fee paid in metropolitan court  
22 and ten dollars (\$10.00) from each jury fee paid in  
23 metropolitan court shall be paid by the court clerk to the  
24 employer's accumulation fund."

25 SECTION 3. Section 10-12C-10 NMSA 1978 (being Laws 1992,

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1 Chapter 118, Section 10, as amended) is amended to read:

2 "10-12C-10. MEMBER CONTRIBUTIONS--TAX TREATMENT.--

3 A. Members, while in office, shall contribute the  
4 following amounts to the member contribution fund:

5 (1) through June 30, 2006, six and one-half  
6 percent of salary; ~~and~~

7 (2) ~~[on and after]~~ from July 1, 2006 through  
8 June 30, 2011, seven and one-half percent of salary, except  
9 that, from July 1, 2009 through June 30, 2011, for members  
10 whose annual salary is greater than twenty thousand dollars  
11 (\$20,000), the member contribution rate shall be nine percent  
12 of salary;

13 (3) from July 1, 2011 through June 30, 2012,  
14 eight and seventeen-hundredths percent of salary;

15 (4) from July 1, 2012 through June 30, 2013,  
16 eight and eighty-four hundredths percent of salary;

17 (5) from July 1, 2013 through June 30, 2014,  
18 nine and fifty-one hundredths percent of salary; and

19 (6) on and after July 1, 2014, ten and  
20 seventeen-hundredths percent of salary.

21 B. Upon implementation, the state, acting as  
22 employer of members covered pursuant to the provisions of the  
23 Magistrate Retirement Act, shall, solely for the purpose of  
24 compliance with Section 414(h) of the Internal Revenue Code of  
25 1986, pick up for the purposes specified in that section member

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1 contributions required by this section for all annual salary  
2 earned by the member. Member contributions picked up pursuant  
3 to the provisions of this section shall be treated as employer  
4 contributions for purposes of determining income tax  
5 obligations under the Internal Revenue Code of 1986; however,  
6 such picked-up member contributions shall be included in the  
7 determination of the member's gross annual salary for all other  
8 purposes under federal and state laws. Member contributions  
9 picked up pursuant to the provisions of this section shall  
10 continue to be designated member contributions for all purposes  
11 of the Magistrate Retirement Act and shall be considered as  
12 part of the member's annual salary for purposes of determining  
13 the amount of the member's contribution. The provisions of  
14 this section are mandatory, and the member shall have no option  
15 concerning the pick up or concerning the receipt of the  
16 contributed amounts directly instead of having the amounts paid  
17 by the employer to the retirement system. Implementation  
18 occurs upon authorization by the board. In no event may  
19 implementation occur other than at the beginning of a pay  
20 period applicable to the member."

21 SECTION 4. Section 10-12C-11 NMSA 1978 (being Laws 1992,  
22 Chapter 118, Section 11, as amended) is amended to read:

23 "10-12C-11. EMPLOYER CONTRIBUTIONS.--

24 A. The state, through the administrative office of  
25 the courts, shall contribute the following amounts to the fund:

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1 (1) through June 30, 2006, ten percent of  
2 salary for each member in office; ~~and~~

3 (2) ~~on and after~~ from July 1, 2006 through  
4 June 30, 2011, eleven percent of salary for each member in  
5 office, except that, from July 1, 2009 through June 30, 2011,  
6 for members whose annual salary is greater than twenty thousand  
7 dollars (\$20,000), the state contribution rate shall be nine  
8 and one-half percent of salary for each member in office;

9 (3) from July 1, 2011 through June 30, 2012,  
10 twelve and thirty-three hundredths percent of salary for each  
11 member in office;

12 (4) from July 1, 2012 through June 30, 2013,  
13 thirteen and sixty-six hundredths percent of salary for each  
14 member in office;

15 (5) from July 1, 2013 through June 30, 2014,  
16 fourteen and ninety-nine hundredths percent of salary for each  
17 member in office; and

18 (6) on and after July 1, 2014, sixteen and  
19 thirty-three hundredths percent of salary for each member in  
20 office.

21 B. Twenty-five dollars (\$25.00) from each civil  
22 case docket fee paid in magistrate court and ten dollars  
23 (\$10.00) from each civil jury fee paid in magistrate court  
24 shall be paid by the court clerk to the employer's accumulation  
25 fund."

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HOUSE BILL

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

ENDORSED BY THE INVESTMENTS OVERSIGHT COMMITTEE

AN ACT

RELATING TO THE PUBLIC EMPLOYEES RETIREMENT ASSOCIATION;  
AUTHORIZING THE RETIREMENT BOARD TO SELECT A CUSTODIAN BANK AND  
TO HIRE ATTORNEYS ON A CONTINGENT FEE BASIS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** Section 10-11-130 NMSA 1978 (being Laws 1987,  
Chapter 253, Section 130, as amended) is amended to read:

"10-11-130. RETIREMENT BOARD--AUTHORITY--MEMBERSHIP.--

A. The "retirement board" is created and is the trustee of the association and the funds created by the state retirement system acts and has all the powers necessary or convenient to carry out and effectuate the purposes and provisions of the state retirement system acts, including, in addition to any specific powers provided for in the Public Employees Retirement Act but without limiting the generality of

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1 the foregoing, the power to:

2 (1) administer the state retirement system  
3 acts, including the management of the association and making  
4 effective the provisions of those acts, as well as to  
5 administer and manage any other employee benefit acts as  
6 provided by law;

7 (2) in addition to utilizing services of the  
8 attorney general and notwithstanding any other provision of  
9 law, employ or contract with and compensate competent legal  
10 counsel to handle the legal matters and litigation of the  
11 retirement board and the association and to give advice and  
12 counsel in regard to any matter connected with the duties of  
13 the retirement board. The retirement board may contract for  
14 legal services for litigation matters on a contingent fee  
15 basis, subject to a request for proposals process approved by  
16 the board;

17 (3) administer oaths;

18 (4) adopt and use a seal for authentication of  
19 records, processes and proceedings;

20 (5) create and maintain records relating to  
21 all members, affiliated public employers and all activities and  
22 duties required of the retirement board;

23 (6) issue subpoenas and compel the production  
24 of evidence and attendance of witnesses in connection with any  
25 hearings or proceedings of the retirement board;

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1 (7) make and execute contracts;

2 (8) purchase, acquire or hold land adjacent to  
3 the state capitol grounds or other suitable location and build  
4 thereon a building to house the association and its employees  
5 and, in the event additional office space is available in the  
6 building after the retirement board and its employees have been  
7 housed, to rent or lease the additional space to any public  
8 agency or private person; provided that first priority for the  
9 rental or leasing shall be to public agencies; and further  
10 provided that for the purpose of purchasing, acquiring or  
11 holding the land and the building thereon, the retirement board  
12 may use funds from the income fund and any other funds  
13 controlled by the retirement board the use of which for such  
14 purposes is not prohibited by law;

15 (9) after the sale of the land and building  
16 acquired pursuant to Paragraph (8) of this subsection, acquire  
17 land and build thereon a new building to house the association  
18 and its employees and hold the building and land in fee simple  
19 in the name of the association. In order to acquire the land  
20 and plan, design and construct the building, the retirement  
21 board may expend the proceeds of the sale of the land and  
22 building acquired pursuant to Paragraph (8) of this subsection  
23 or any funds controlled by the board, the use of which for such  
24 purposes is not otherwise prohibited by law;

25 (10) make and adopt such reasonable rules as

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1 may be necessary or convenient to carry out the duties of the  
2 retirement board and activities of the association, including  
3 any rules necessary to preserve the status of the association  
4 as a qualified pension plan under the provisions of the  
5 Internal Revenue Code of 1986, as amended, or under successor  
6 or related provisions of law; ~~and~~

7 (11) designate committees and designate  
8 committee members, including individuals who may not be members  
9 of the association; and

10 (12) select and contract for the services of  
11 one or more custodian banks for all funds under the retirement  
12 board's management. For the purpose of this paragraph,  
13 "custodian bank" means a financial institution with the general  
14 fiduciary duties to manage, control and collect the assets of  
15 an investment fund, including receiving all deposits and paying  
16 all disbursements as directed by staff, safekeeping of assets,  
17 coordination of asset transfers, timely settlement of  
18 securities transactions and accurate and timely reporting of  
19 the assets by individual account and in total.

20 B. The retirement board consists of:

- 21 (1) the secretary of state;  
22 (2) the state treasurer;  
23 (3) four members under a state coverage plan  
24 to be elected by the members under state coverage plans;  
25 (4) four members under a municipal coverage

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1 plan to be elected by the members under municipal coverage  
2 plans, provided one member shall be a municipal member employed  
3 by a county; and

4 (5) two retired members to be elected by the  
5 retired members of the association.

6 C. The results of elections of elected members of  
7 the retirement board shall be certified at the annual meeting  
8 of the association. Elections shall be conducted according to  
9 rules the retirement board adopts from time to time.

10 D. The regular term of office of the elected  
11 members of the retirement board is four years. The term of one  
12 retirement board member under a state coverage plan expires  
13 annually on December 31. The terms of retirement board members  
14 under a municipal coverage plan expire on December 31 of  
15 noncoinciding years in the pattern set by the retirement board.  
16 Members of the retirement board serve until their successors  
17 have qualified.

18 E. A member elected to the retirement board who  
19 fails to attend four consecutively scheduled meetings of the  
20 retirement board, unless in each case excused for cause by the  
21 retirement board members in attendance, is considered to have  
22 resigned from the retirement board, and the retirement board  
23 shall by resolution declare the office vacated as of the date  
24 of adoption of the resolution. A vacancy occurring on the  
25 retirement board, except in the case of an elected official,

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1 shall be filled by the remaining retirement board members,  
2 without requirement that a quorum be present. The member  
3 appointed to fill the vacancy serves for the remainder of the  
4 vacated term.

5 F. Members of the retirement board serve without  
6 salary for their services as retirement board members, but they  
7 shall receive those amounts authorized under the Per Diem and  
8 Mileage Act.

9 G. The retirement board shall hold four regular  
10 meetings each year and shall designate in advance the time and  
11 place of the meetings. Special meetings and emergency meetings  
12 of the retirement board may be held upon call of the [~~chairman~~]  
13 chair or any three members of the retirement board. Written  
14 notice of special meetings shall be sent to each member of the  
15 retirement board at least seventy-two hours in advance of the  
16 special meeting. Verbal notice of emergency meetings shall be  
17 given to as many members as is feasible at least eight hours  
18 before the emergency meeting, and the meeting shall commence  
19 with a statement of the nature of the emergency. The  
20 retirement board shall adopt its own rules of procedure and  
21 shall keep a record of its proceedings. All meetings of the  
22 retirement board shall comply with the Open Meetings Act. A  
23 majority of retirement board members shall constitute a quorum.  
24 Each attending member of the retirement board is entitled to  
25 one vote on each question before the retirement board, and at

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1 least a majority of a quorum shall be necessary for a decision  
2 by the retirement board.

3 H. Annual meetings of the members of the  
4 association shall be held in Santa Fe at such time and place as  
5 the retirement board shall from time to time determine.  
6 Special meetings of the members of the association shall be  
7 held in Santa Fe upon call of any seven retirement board  
8 members. The retirement board shall send a written notice to  
9 the last known residence address of each member currently  
10 employed by an affiliated public employer at least ten days  
11 prior to any meeting of the members of the association. The  
12 notice shall contain the call of the meeting and the principal  
13 purpose of the meeting. All meetings of the association shall  
14 be public and shall be conducted according to procedures the  
15 retirement board shall from time to time adopt. The retirement  
16 board shall keep a record of the proceedings of each meeting of  
17 the association.

18 I. Neither the retirement board nor the association  
19 shall allow public inspection of, or disclosure of, information  
20 from any member or retiree file unless a prior release and  
21 consent, in the form prescribed by the association, has been  
22 executed by the member or retiree; except that applicable  
23 coverage plans, amounts of retirement plan contributions made  
24 by members and affiliated public employers, pension amounts  
25 paid and the names and addresses of public employees retirement

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1 association members or retirees requested for election purposes  
2 by candidates for election to the retirement board may be  
3 produced or disclosed without release or consent."

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SENATE BILL

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

ENDORSED BY THE INVESTMENTS OVERSIGHT COMMITTEE

AN ACT

RELATING TO PUBLIC FINANCES; AMENDING THE MEMBERSHIP, POWERS AND DUTIES OF THE STATE INVESTMENT COUNCIL; PROVIDING FOR THE ELECTION OF THE CHAIR AND VICE CHAIR OF THE COUNCIL; PROVIDING FOR MEETINGS OF THE COUNCIL EVERY OTHER MONTH; EXTENDING REPORTING DEADLINES; AUTHORIZING THE COUNCIL TO CONTRACT FOR LEGAL SERVICES ON A CONTINGENT FEE BASIS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** Section 6-8-2 NMSA 1978 (being Laws 1957, Chapter 179, Section 2, as amended) is amended to read:

"6-8-2. STATE INVESTMENT COUNCIL.--

A. There is created a "state investment council".

The council shall be composed of:

- (1) the governor;
- (2) the state treasurer;

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1 (3) the commissioner of public lands;

2 (4) the secretary;

3 [~~(5) the chief financial officer of a state~~  
4 ~~institution of higher education appointed by the governor with~~  
5 ~~the advice and consent of the senate;~~

6 ~~(6)]~~ (5) four members appointed by the New  
7 Mexico legislative council with the advice and consent of the  
8 senate; provided that no more than two members shall be members  
9 of the same political party; and

10 [~~(7) two]~~ (6) three members appointed by the  
11 governor with the advice and consent of the senate.

12 B. The chair [~~of the council shall be the governor]~~  
13 and the vice chair of the council shall be selected annually by  
14 the council from among the members appointed pursuant to  
15 Paragraphs (5) and (6) of Subsection A of this section. All  
16 actions of the council shall be by majority vote, and a  
17 majority of the members shall constitute a quorum.

18 C. Members of the council appointed pursuant to  
19 Paragraphs [~~(6) and (7)]~~ (5) and (6) of Subsection A of this  
20 section shall be reimbursed per diem and mileage pursuant to  
21 the provisions of the Per Diem and Mileage Act."

22 SECTION 2. Section 6-8-3 NMSA 1978 (being Laws 1957,  
23 Chapter 179, Section 3, as amended) is amended to read:

24 "6-8-3. COUNCIL TERMS AND QUALIFICATIONS.--

25 A. Members of the council appointed pursuant to

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1 Paragraphs [~~(6) and (7)~~] (5) and (6) of Subsection A of Section  
2 6-8-2 NMSA 1978, with the advice and consent of the senate,  
3 shall serve for staggered terms of five years. Members of the  
4 council shall serve until their successors are appointed and  
5 have qualified.

6 B. The members of the council appointed pursuant to  
7 Paragraphs [~~(6) and (7)~~] (5) and (6) of Subsection A of Section  
8 6-8-2 NMSA 1978 shall be qualified by competence and no less  
9 than ten years experience in the field of investment or  
10 finance. A member of the council shall not have had any  
11 contracts to do business with the state investment council, the  
12 investment office, the office of the state treasurer, the  
13 educational retirement board, the public employees retirement  
14 association, the New Mexico finance authority or the state  
15 board of finance for a period of two calendar years prior to  
16 the person's appointment to the council and shall not enter  
17 into any contracts to do business with any of the named state  
18 agencies or instrumentalities for a period of two calendar  
19 years after the end of the term for which the member was  
20 appointed. Members of the council and officers and employees  
21 of the council shall be governed by the provisions of the  
22 Governmental Conduct Act. Nothing in this section or in the  
23 Governmental Conduct Act shall be construed as prohibiting an  
24 officer of a financial institution from participating as a  
25 member of the council in setting general policies of the

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1 council, nor shall any provision of the Governmental Conduct  
2 Act prohibit the council or the state treasurer from depositing  
3 funds under the jurisdiction of the council in any financial  
4 institution. A council member shall not hold an office or  
5 employment in a political party.

6 C. ~~[The member appointed pursuant to Paragraph (5)~~  
7 ~~of Subsection A of Section 6-8-2 NMSA 1978 shall serve at the~~  
8 ~~pleasure of the governor.]~~ A member of the council appointed  
9 pursuant to Paragraphs ~~[(6) and (7)]~~ (5) and (6) of Subsection  
10 A of Section 6-8-2 NMSA 1978 may be removed from the council by  
11 the appointing person or entity, for failure to attend three  
12 consecutive meetings or other cause, in the manner provided for  
13 removal of members of boards of regents under Article 12,  
14 Section 13 of the constitution of New Mexico. A vacancy in the  
15 membership of the council occurring other than by expiration of  
16 term shall be filled in the same manner as the original  
17 appointment but for the unexpired term only."

18 SECTION 3. Section 6-8-4 NMSA 1978 (being Laws 1957,  
19 Chapter 179, Section 4, as amended) is amended to read:

20 "6-8-4. INVESTMENT OFFICE--STATE INVESTMENT OFFICER--  
21 TERMS.--

22 A. There is established an "investment office".  
23 The chief administrative officer of the office shall be known  
24 as the "state investment officer".

25 B. The state investment officer shall be appointed

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underscored material = new  
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1 by the council. The state investment officer shall devote the  
2 officer's entire time and attention to the duties of that  
3 office and shall not engage in any other occupation or  
4 profession or hold any other public office, appointive or  
5 elective. The officer shall be a person qualified, by training  
6 and investment experience, to direct the work of the investment  
7 office and shall have had at least five years' professional  
8 experience as an investment officer. The officer shall receive  
9 a salary to be determined by the [~~state investment~~] council  
10 [~~but in no case less than fifty thousand dollars (\$50,000)~~  
11 ~~annually~~].

12 C. The state investment officer shall serve [~~for an~~  
13 ~~initial term of two years beginning July 1, 1981 and thereafter~~  
14 ~~for terms of four years. The state investment officer may be~~  
15 ~~removed from office by the council for cause~~] at the pleasure  
16 of the council."

17 SECTION 4. Section 6-8-7 NMSA 1978 (being Laws 1957,  
18 Chapter 179, Section 7, as amended) is amended to read:

19 "6-8-7. POWERS AND DUTIES OF THE STATE INVESTMENT COUNCIL  
20 AND STATE INVESTMENT OFFICER--INVESTMENT POLICY--INVESTMENT  
21 MANAGERS.--

22 A. Subject to the limitations, conditions and  
23 restrictions contained in policymaking regulations or  
24 resolutions adopted by the council, the council may make  
25 purchases, sales, exchanges, investments and reinvestments of

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underscored material = new  
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1 the assets of all funds in accordance with the Uniform Prudent  
2 Investor Act. The state investment officer and the council are  
3 trustees of all funds under their control and shall see that  
4 money invested is at all times handled in the best interests of  
5 the state. The council may delegate administrative and  
6 investment-related functions to the state investment officer.

7 B. The state investment officer shall formulate and  
8 recommend to the council for approval investment [~~regulations~~  
9 ~~or resolutions~~] policies pertaining to the kind or nature of  
10 investments and limitations, conditions and restrictions upon  
11 the methods, practices or procedures for investment,  
12 reinvestment, purchase, sale or exchange transactions that  
13 should govern the activities of the investment office.

14 C. The council shall meet at least once [~~each~~]  
15 every other month, and as often as exigencies may demand, to  
16 consult with the state investment officer concerning the work  
17 of the investment office. The council shall have access to all  
18 files and records of the investment office and shall require  
19 the state investment officer to report on and provide  
20 information necessary to the performance of council functions.  
21 The council may hire one or more investment management or  
22 consulting firms to advise the council with respect to the  
23 council's [~~overall investment plan for the investment of all~~  
24 ~~funds managed by the investment office~~] investments and pay  
25 reasonable compensation for such advisory services from the

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underscored material = new  
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1 assets of the applicable funds, subject to budgeting and  
2 appropriation by the legislature. The terms of any such  
3 investment management services contract shall incorporate the  
4 statutory requirements for investment of funds under the  
5 council's jurisdiction.

6 D. The council shall provide an opportunity for  
7 public comment at meetings of the council. Advance notice of  
8 meetings shall be published on the council's web site and in a  
9 newspaper of general circulation at least ten days in advance  
10 of the meeting.

11 E. All funds managed by the [~~state investment~~  
12 ~~officer~~] council shall be managed in accordance with the  
13 Uniform Prudent Investor Act. [~~The council may employ~~  
14 ~~investment management services to invest the funds and may pay~~  
15 ~~reasonable compensation for investment management services from~~  
16 ~~the assets of the applicable funds, subject to budgeting and~~  
17 ~~appropriation by the legislature.~~]

18 F. The council may contract for legal services on a  
19 contingent fee basis, subject to a request for proposals  
20 process approved by the council.

21 G. The council may provide for commercial liability  
22 insurance coverage specifically related to official duties and  
23 council actions for members of the council, investment office  
24 staff and council committees, subject to budget availability.

25 [~~F.~~] H. The council, the state investment officer,

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underscored material = new  
~~[bracketed material]~~ = delete

1 any person providing investment advice to the council [~~or~~],  
2 state investment officer or investment office staff for a fee  
3 or other compensation and all persons exercising discretionary  
4 authority or control of funds under the management of the  
5 council are fiduciaries.

6 [~~G.~~] I. The council may select and contract for the  
7 services of one or more custodian banks for all funds under the  
8 council's management. For the purpose of this subsection,  
9 "custodian bank" means a financial institution with the general  
10 fiduciary duties to manage, control and collect the assets of  
11 an investment fund, including receiving all deposits and paying  
12 all disbursements as directed by staff, safekeeping of assets,  
13 coordination of asset transfers, timely settlement of  
14 securities transactions and accurate and timely reporting of  
15 the assets by individual account and in total.

16 [~~H.~~] J. For funds available for investment for more  
17 than one year, the council may contract with any state agency  
18 to provide investment advisory or investment management  
19 services, separately or through a pooled investment fund,  
20 provided the state agency enters into a joint powers agreement  
21 with the council and that state agency pays at least the direct  
22 cost of such services. Notwithstanding any statutory provision  
23 governing state agency investments, the council may invest  
24 funds available from a state agency pursuant to a joint powers  
25 agreement in any type of investment permitted for the land

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underscored material = new  
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1 grant permanent funds under the prudent investor rule. In  
2 performing investment services for a state agency, the council  
3 [~~and~~], the state investment officer and investment office staff  
4 are exempt from the New Mexico Uniform Securities Act. As used  
5 in this subsection, "state agency" means any branch, agency,  
6 department, board, instrumentality, institution or political  
7 subdivision of the state, the New Mexico finance authority, the  
8 New Mexico mortgage finance authority and any tax-exempt  
9 private endowment entity whose sole beneficiary is a state  
10 agency.

11 [~~F.~~] K. The state investment officer shall provide  
12 quarterly performance reports to the legislative finance  
13 committee. Annually, the [~~state investment officer~~] council  
14 shall [~~ratify and~~] provide written investment policies  
15 [~~including any amendments~~] to the legislative finance  
16 committee."

17 SECTION 5. Section 6-8-14 NMSA 1978 (being Laws 1957,  
18 Chapter 179, Section 14, as amended) is amended to read:

19 "6-8-14. MONTHLY REPORTS.--No later than [~~ten~~] thirty  
20 days after the close of each month, the state investment  
21 officer shall submit to the secretary and the [~~state~~  
22 ~~investment~~] council a report of the operations of the office  
23 during the past month. Each report shall give a complete  
24 statement of the state investment portfolio as of the time of  
25 the report and, in addition, shall include a detailed summary

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1 of the month's investment, reinvestment, purchase, sale and  
2 exchange transactions, setting forth the investments bought,  
3 sold or exchanged, the dates thereof, the prices paid or  
4 obtained, the names of the dealers involved, fees paid for each  
5 transaction, disclosure of contractor arrangements and a  
6 statement of the funds or accounts referred to herein. [~~The~~  
7 ~~reports shall also be circulated to a mailing list of~~  
8 ~~investment bankers and brokers recommended by the council.~~]  
9 The reports shall be published on the web [~~sites~~] site of the  
10 council [~~the legislature and the department of finance and~~  
11 ~~administration~~] and shall be open for inspection to the public  
12 and the press in the office of the state investment officer."

13 SECTION 6. Section 6-8-20 NMSA 1978 (being Laws 1987,  
14 Chapter 219, Section 3, as amended) is amended to read:

15 "6-8-20. PRIVATE EQUITY INVESTMENT ADVISORY COMMITTEE  
16 CREATED--MEMBERSHIP--DUTIES--TERMS--LIABILITIES--CONFLICT OF  
17 INTEREST.--

18 A. There is created the "private equity investment  
19 advisory committee" to the council. The committee consists of  
20 the state investment officer, a member of the council appointed  
21 by the council and three members who are qualified by  
22 competence and experience in finance and investment and  
23 knowledgeable about the private equity investment process and  
24 who are appointed by the council.

25 B. Members appointed by the council, except the

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1 council member, shall be appointed for three-year terms;  
2 provided that the terms of the initial committee members shall  
3 be staggered so that the term of one member expires each year.  
4 After the initial appointments, all appointed members shall be  
5 appointed for three-year terms. Members shall serve until  
6 their successors are appointed. A vacancy occurring other than  
7 by expiration of term shall be filled in the same manner as the  
8 original appointment, but only for the unexpired term.

9 C. The committee shall review and make  
10 recommendations to the council on investments authorized  
11 pursuant to Sections 7-27-5.15 and 7-27-5.26 NMSA 1978 and all  
12 other private equity investments and shall advise the council  
13 in matters and policies related to such investments. The  
14 committee shall establish policies for national private equity  
15 fund investments, New Mexico private equity fund investments  
16 and New Mexico film [~~private equity fund~~] investments [~~not less~~  
17 ~~often than annually~~] and shall make copies available to  
18 interested parties.

19 D. Members of the committee shall receive per diem  
20 and mileage as provided for nonsalaried public officers in the  
21 Per Diem and Mileage Act and shall receive no other  
22 compensation, perquisite or allowance.

23 E. The committee shall elect annually a chair from  
24 among its members and may elect other officers as necessary.  
25 The committee shall meet upon the call of the chair or the

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1 state investment officer.

2 F. Members of the committee are public employees  
3 within the meaning of the Tort Claims Act and are entitled to  
4 all immunity and indemnification provided under that act.

5 G. A person shall not be a member of the committee  
6 if any recommendation, action or decision of the committee will  
7 or is likely to result in direct, measurable economic gain to  
8 that person or that person's employer.

9 H. The state investment officer may enter into  
10 contracts with investment advisors for private equity fund  
11 investments and film fund investments authorized pursuant to  
12 Sections 7-27-5.15 and 7-27-5.26 NMSA 1978 and all other  
13 private equity investments and may pay budgeted expenses for  
14 the advisors from the assets of any fund administered under the  
15 supervision of the council, as applicable.

16 I. As used in this section, "private equity  
17 investments" means any legal entity that has as its primary  
18 business activity the investment of funds in return for equity  
19 in or debt of businesses for the purpose of providing capital  
20 for startup, expansion, new product development,  
21 recapitalization or a similar business purpose."

22 SECTION 7. TEMPORARY PROVISION--TRANSITION MEMBERSHIP OF  
23 STATE INVESTMENT COUNCIL.--

24 A. On July 1, 2011, the chief financial officer  
25 appointed by the governor is no longer a member of the state

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1 investment council.

2 B. Within thirty days of July 1, 2011, the governor  
3 shall appoint a member of the state investment council,  
4 pursuant to Paragraph (6) of Subsection A of Section 6-8-2 NMSA  
5 1978, who shall serve on an interim basis until confirmed by  
6 the senate.

7 SECTION 8. EFFECTIVE DATE.--The effective date of the  
8 provisions of this act is July 1, 2011.

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SENATE BILL

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

FOR THE INVESTMENTS OVERSIGHT COMMITTEE

AN ACT

RELATING TO RETIREMENT; AMENDING THE PUBLIC EMPLOYEES  
RETIREMENT ACT; REDUCING COST-OF-LIVING ADJUSTMENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 10-11-118 NMSA 1978 (being Laws 1987,  
Chapter 253, Section 118, as amended) is amended to read:

"10-11-118. COST-OF-LIVING ADJUSTMENTS.--

A. For the purposes of this section:

(1) "adjustment factor" means a multiplicative  
factor computed to provide an annuity adjustment pursuant to  
the provisions of Subsection C of this section;

(2) "consumer price index" means the average  
of the monthly consumer price indexes for a calendar year for  
the entire United States for all items as published by the  
United States;

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1                   (3) "next preceding calendar year" means the  
2 full calendar year immediately prior to the preceding calendar  
3 year; and

4                   ~~[(1)]~~ (4) "preceding calendar year" means the  
5 twelve-month period ending on the December 31 preceding the  
6 July 1 in which pensions are being adjusted ~~[and~~

7                   ~~(2) "second preceding calendar year" means the~~  
8 ~~full calendar year prior to the preceding calendar year].~~

9                   B. The amount of pension payable to a qualified  
10 pension recipient shall be increased ~~[three percent]~~ each July  
11 1 ~~[The amount of the increase shall be determined by~~  
12 ~~multiplying the amount of pension inclusive of all prior~~  
13 ~~adjustments by three percent.]~~ by applying an adjustment factor  
14 that results in an adjustment equal to three-fourths of the  
15 percentage increase of the consumer price index between the  
16 next preceding calendar year and the preceding calendar year,  
17 except that the adjustment shall not exceed three percent in  
18 absolute value nor shall it be less than zero percent in  
19 absolute value. The amount of pension payable shall not be  
20 decreased in the event that there is a decrease in the consumer  
21 price index between the next preceding calendar year and the  
22 preceding calendar year.

23                   C. A qualified pension recipient is:

24                   (1) a normal retired member who has been  
25 retired for at least two full calendar years from the effective

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1 date of the latest retirement prior to July 1 of the year in  
2 which the pension is being adjusted;

3 (2) a normal retired member who has attained  
4 age sixty-five years and been retired for at least one full  
5 calendar year from the effective date of the latest retirement  
6 prior to July 1 of the year in which the pension is being  
7 adjusted;

8 (3) a disability retired member who has been  
9 retired for at least one full calendar year from the effective  
10 date of the latest retirement prior to July 1 of the year in  
11 which the pension is being adjusted;

12 (4) a survivor beneficiary who has received a  
13 survivor pension for at least two full calendar years; or

14 (5) a survivor beneficiary of a deceased  
15 retired member who otherwise would have been retired at least  
16 two full calendar years from the effective date of the latest  
17 retirement prior to July 1 of the year in which the pension is  
18 being adjusted.

19 D. A qualified pension recipient may decline an  
20 increase in a pension by giving the association written notice  
21 of the decision to decline the increase at least thirty days  
22 prior to the date the increase would take effect."

23 **SECTION 2. EFFECTIVE DATE.**--The effective date of the  
24 provisions of this act is July 1, 2011.

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SENATE BILL

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

FOR THE INVESTMENTS OVERSIGHT COMMITTEE

AN ACT

RELATING TO PUBLIC EMPLOYEES RETIREMENT; AMENDING THE PUBLIC  
EMPLOYEES RETIREMENT ACT; REQUIRING MUNICIPAL EMPLOYEES TO MAKE  
THE EMPLOYEE PORTION OF THE CONTRIBUTION TO THEIR RETIREMENT  
PLAN.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** Section 10-11-5 NMSA 1978 (being Laws 1987,  
Chapter 253, Section 5, as amended) is amended to read:

"10-11-5. CREDITED SERVICE--MUNICIPAL ELECTION TO MAKE  
EMPLOYEE CONTRIBUTIONS.--Except as provided in Subsection F of  
this section, a municipal affiliated public employer may elect  
by resolution of its governing body and in the manner  
prescribed by the retirement board to be responsible for making  
contributions of up to seventy-five percent of its employees'  
member contributions as follows:

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1           A. the resolution shall be irrevocable; however, a  
2 municipal affiliated public employer may by subsequent  
3 resolution:

4                   (1) elect to increase the percentage of  
5 employee member contributions for which it will be responsible;  
6 or

7                   (2) at the time a new coverage plan is  
8 adopted, elect to be responsible for a different percentage of  
9 employee member contributions than that which it elected under  
10 a previous coverage plan;

11           B. the resolution shall apply to all employees or  
12 else to specified employee divisions of the municipal  
13 affiliated public employer and shall be effective the first pay  
14 period of the month following the filing of the resolution with  
15 the retirement board;

16           C. the portion of the employee contributions made  
17 by the municipal affiliated public employer on behalf of a  
18 member shall be credited to the member's individual accumulated  
19 member contribution account in the member contribution fund.  
20 The member shall be responsible for the difference between the  
21 contributions the member would be required to make if the  
22 municipal affiliated public employer had not made the election  
23 provided for in this section and the amount contributed by the  
24 municipal affiliated public employer [~~under~~] pursuant to the  
25 provisions of this section;

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1           D. pensions payable to members whose municipal  
2 affiliated public employer makes the election provided for in  
3 this section shall be the same as if the member had made the  
4 entire member contribution; ~~and~~

5           E. any municipal affiliated public employer  
6 increasing the percentage of the employee member contributions  
7 it elects to make pursuant to this section shall submit a  
8 resolution to the association by July 1 of the fiscal year in  
9 which the increase will take place indicating the percentage of  
10 the employee member contributions that will be made by the  
11 municipal affiliated public employer; and

12           F. a municipal affiliated public employer shall not  
13 elect to be responsible for making any portion of the  
14 municipality's employees' member contributions to any coverage  
15 plan created on or after July 1, 2011."

16           **SECTION 2. EFFECTIVE DATE.**--The effective date of the  
17 provisions of this act is July 1, 2011.