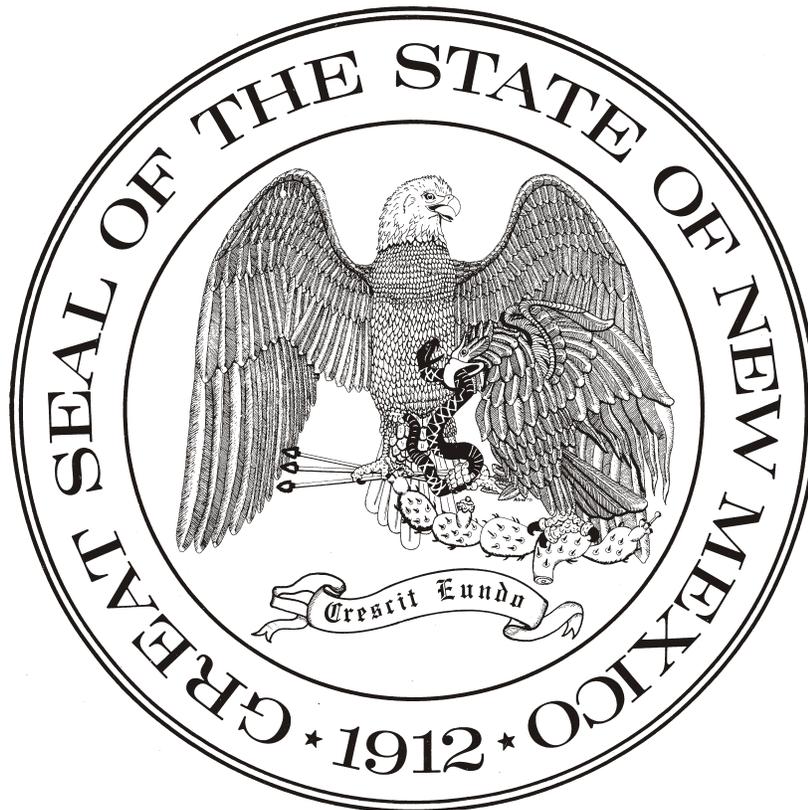


INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

2011 INTERIM

FINAL REPORT



**New Mexico Legislative Council Service
Santa Fe, New Mexico
January, 2012**

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

**2011 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE**

The Investments and Pensions Oversight Committee (IPOC) was created by the New Mexico Legislative Council on May 9, 2011. Committee members are as follows:

Members

Sen. George K. Munoz, Chair	Sen. Carroll H. Leavell
Rep. Henry Kiki Saavedra, Vice Chair	Sen. Steven P. Neville
Rep. David L. Doyle	Sen. Mary Kay Papen
Rep. William "Bill" J. Gray	Sen. John M. Sapien
Sen. Timothy M. Keller	Rep. Jim R. Trujillo
Rep. Larry A. Larrañaga	Rep. Luciano "Lucky" Varela

Advisory Members

Rep. Donald E. Bratton	Rep. Jane E. Powdrell-Culbert
Sen. Carlos R. Cisneros	Rep. William "Bill" R. Rehm
Sen. Tim Eichenberg	Sen. John C. Ryan
Rep. Miguel P. Garcia	Sen. Michael S. Sanchez
Rep. Roberto "Bobby" J. Gonzales	Sen. John Arthur Smith
Sen. Stuart Ingle	Rep. Sheryl Williams Stapleton
Rep. Rhonda S. King	Rep. Mimi Stewart
Rep. Patricia A. Lundstrom	Rep. Shirley A. Tyler
Sen. William H. Payne	Rep. Richard D. Vigil

Work Plan

During the 2011 interim, the IPOC proposes to:

1. receive reports from the Educational Retirement Board (ERB) and the Public Employees Retirement Association (PERA) on their current projections regarding the solvency of their pension funds and receive testimony from the ERB, the PERA and their actuaries, employee representatives, pension experts and others regarding viable proposals to ensure the pension trust funds' long-term solvency;
2. receive testimony on the potential costs and benefits of merging the pension plan administration and investment functions of the PERA and the ERB in order to better provide comparable and sustainable pension benefits to public employees and teachers, improve trust fund investment returns and reduce administrative costs through "economies of scale" and the ability to hire and retain the most qualified staff and/or consultants at less cost;
3. receive reports from the investment funds, the Office of the Attorney General, private plaintiffs 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.;

4. examine the performance of the investment portfolios of the State Investment Council (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. The IPOC will focus on the returns of the economically targeted investments of the SIC, particularly the Small Business Investment Corporation and the film loan program; and

5. 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 IPOC will focus on how the investment policies for the retirement funds have changed in response to changes in projections regarding program solvency and unfunded liabilities.

2011 Approved Meeting Schedule

<u>Date</u>	<u>Location</u>
June 9	Santa Fe
July 27	Santa Fe
August 31	Albuquerque
October 27-28	Santa Fe

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

THE INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE SUMMARY

Introduction

The Investments and Pensions Oversight Committee (IPOC) was created by the New Mexico Legislative Council on May 9, 2011. The IPOC focused during this interim on actuarial soundness of the trust funds of the Public Employees Retirement Association (PERA) Board, the Educational Retirement Board (ERB) and the Retiree Health Care Authority (RHCA), as well as the investment functions of the PERA, ERB and State Investment Council (SIC). The oversight of PERA, ERB and SIC investment functions included not only an examination of investment policies and returns, but also testimony on the progress of current or pending litigation involving the state's investment or pension funds. 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 IPOC meetings during the 2011 interim addressed a number of issues related to solvency of the retirement funds administered by the PERA and the ERB. The committee received testimony on the projected solvency of the retirement funds, proposals to ensure the long-term solvency of the funds and the actions other states are taking to enhance the solvency of their pension funds. The IPOC received testimony from SIC, PERA and ERB staff on the investment performance of each fund and from the attorney general, investment fund counsel and private plaintiffs on current or pending litigation involving these funds and allegations of "pay-to-play", investment fraud and related matters.

The IPOC took testimony at its June meeting from the SIC on recent investment performance. The state investment officer also reported that, within the 30 days prior to the June IPOC meeting, the SIC filed several lawsuits in both state and federal courts seeking to hold multiple individuals and a partnership accountable for their role in "pay-to-play" and kickback schemes involving the SIC during the period 2003 to 2009.

The PERA and ERB reported on recent investment performance and the actuarial soundness of their respective pension funds. The general counsel for the PERA addressed the committee regarding the PERA's fund soundness. The chief investment officer for the PERA updated the committee members on investment performance as of May 31, 2011.

The deputy director of the ERB addressed the actuarial soundness of the ERB's retirement fund and the investment performance regarding that fund for the 12 months ending on March 31, 2011.

At the July 27 meeting, the IPOC received testimony from a panel of experts on proposals to maintain the long-term solvency of the PERA and the ERB pension funds. That panel included the executive director of the PERA and the deputy director of the ERB, as well as officers of associations representing state employees, teachers, firefighters and police. The IPOC also heard from a panel of the investment officers of the SIC, PERA and ERB on the establishment of realistic earnings goals for their respective investment funds.

IPOC staff reported on proposed changes by the Governmental Accounting Standards Board in pension accounting and financial reporting standards for state and local governments and on the changes that other state legislatures are making to their respective pension plans and the lawsuits being brought by employee groups to challenge the constitutionality of those changes.

A panel of experts updated the committee on the progress of current or pending litigation involving the state's investment or pension funds and allegations of "pay-to-play", investment fraud or related matters. That panel included the state attorney general, the state investment officer and the general counsel for the ERB, as well as a private plaintiff and his counsel.

At its August 31 meeting, the IPOC heard testimony from the executive directors of the PERA and ERB on the impact of various retirement benefit plan changes on the solvency of their respective pension funds. The committee also heard from the executive director of the ERB and a number of teachers on the impact on ERB fund solvency and teacher recruitment of return-to-work provisions currently in statute.

At its October 27 meeting, the IPOC heard a progress report from the PERA and ERB on their efforts to develop board-approved proposals to reduce benefits and/or increase employer and employee contributions to ensure the solvency of their respective pension funds, which would be brought to the committee for endorsement prior to the 2012 legislative session. The RHCA also discussed with the committee various plan changes that could ensure the solvency of the health insurance program for program members. The SIC informed the committee as to possible proposed legislation to be brought to the committee for endorsement.

An additional meeting of the IPOC was approved by the New Mexico Legislative Council for December 2, 2011. The IPOC heard from a panel of experts on the impact on the Severance Tax Permanent Fund (STPF) and public school construction and other capital projects financed with severance tax bonds of proposals to increase the amount of severance tax revenue flowing to the STPF. The panel included the state investment officer, the director of the Public School Capital Outlay Council, the director of the Public School Finance Authority and the director and bond counsel of the State Board of Finance.

The IPOC heard final legislative proposals from the ERB, PERA and IPOC members to enhance the solvency of pension funds; proposals from the SIC to increase its ability to invest in international equities; and a proposal from the state treasurer's office to more clearly define the duties and responsibilities of the state treasurer with regard to receipt, payment and custody of

state funds.

The IPOC voted at the December 2, 2011 meeting to endorse the following legislative proposals:

- A bill to amend the Judicial Retirement Act to have employer contributions to judicial and magistrate retirement funds come from the general fund and to have the portion of civil docket and jury fees that had previously been deposited to the retirement funds be deposited to the general fund. This bill would also increase contributions to the retirement funds. (.187704.1SA)
- A bill to allow retired PERA members to return to work temporarily as a precinct board member for a municipal election or an election covered by the Election Code without suspending their pension benefits. (.187721.1)
- A memorial requesting the creation of a task force to evaluate the solvency of the municipal and state public safety members retirement plans and assess options and make recommendations to the IPOC no later than October 1, 2012 for changes in those plans to ensure their long-term solvency. (.187777.4)
- A memorial requesting the PERA to assess options and to recommend changes to its retirement plans to reduce unfunded retirement benefit liabilities with a goal of bringing the ratio of fund assets to liabilities to 100 percent by 2041 and to report the recommended changes to the appropriate interim committee by October 1, 2012. (.187994.1SA)
- A bill to amend the Educational Retirement Act to establish a minimum retirement age of 55 for members retiring on or after July 1, 2022, to reduce the annual cost-of-living adjustment for retirement annuity payments by 12.5% for existing and future retirees and to change member and employer contribution rates to the Educational Retirement Fund. (.187961.3SA)
- A bill to increase the percentage of the STPF allocated to the Small Business Investment Corporation (SBIC) from one to two and to require that money allocated to the SBIC from the STPF that is not committed within three years of the allocation be returned to the STPF. (.187761.2)
- A bill to change the membership of the SIC by replacing the elected officials with members appointed by the elected officials; removing as a member the chief financial officer of a state institution of higher education; and replacing the four members appointed by the New Mexico Legislative Council with one member each appointed by the president pro tempore of the senate, the minority floor leader of the senate, the speaker of the house of representatives and the minority floor leader of the house of representatives, all appointed with the advice and consent of the senate. The bill

would also increase from two to four the public members appointed by the governor, with the requirement that no more than two of the four be from the same political party. This bill also provides that the chair and the vice chair of the SIC be elected. The bill also changes the powers and duties of the SIC, the state investment officer and staff and certain reporting deadlines. (.187773.1)

- A joint resolution to amend Article 12, Section 7 of the Constitution of New Mexico to increase the standard of care exercised by the state investment officer in investing the land grant permanent funds and removing the limitation on constitutional limitation on investment of the funds in international securities, leaving that limitation to be set only in statute by the legislature. (.187869.3SA)
- A bill to impose a limit of 25 percent on the portion of the book value of the land grant permanent funds that may be invested in international equities at any single time. The bill would become effective upon the certification of the constitutional amendment discussed under the previous item that would remove the constitutional limitation on international investing. (.187917.2SA)
- A bill to clarify the duties and responsibilities of the state treasurer regarding the deposit and accounting of public money. (.187919.2SA)

AGENDAS AND MINUTES OF MEETINGS

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

**June 9, 2011
Room 322, State Capitol
Santa Fe**

Thursday, June 9

- 9:00 a.m. **Call to Order**
—Senator George K. Munoz, Chair
—Representative Henry Kiki Saavedra, Vice Chair
- 9:05 a.m. **Report on Recent Investment Performance: State Investment Council (SIC)**
—Steve Moise, State Investment Officer, SIC
—Vince Smith, Deputy State Investment Officer, SIC
- 10:00 a.m. **Report on Actuarial Soundness of the Public Employees Retirement Association (PERA) Pension Fund and Recent Investment Performance**
—Susan Pittard, General Counsel, PERA
—Joelle Mevi, Chief Investment Officer, PERA
- 11:30 a.m. **Review of State Investment- and Pension-Related Legislation, 2011 Session**
—Tom Pollard, Ph.D., Staff, Investments Oversight Committee (IOC),
Legislative Council Service (LCS)
—Doris Faust, Assistant Director for Drafting Services, LCS
- 12:00 noon **Lunch**
- 1:30 p.m. **Report on Actuarial Soundness of the Educational Retirement Board (ERB) Pension Fund and Recent Investment Performance**
—Rick Scroggins, Deputy Director, ERB
- 3:00 p.m. **Adoption of IOC Proposed Interim Work Plan**
—Tom Pollard, Ph.D., Staff, IOC, LCS
- 3:30 p.m. **Adjourn**

Revised: July 26, 2011

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

**July 27, 2011
Room 322, State Capitol
Santa Fe**

Wednesday, July 27

- 9:00 a.m. **Call to Order**
—Senator George K. Munoz, Chair
—Representative Henry Kiki Saavedra, Vice Chair
- 9:05 a.m. **Proposals to Maintain the Long-Term Solvency of the Public Employees Retirement Association (PERA) and Educational Retirement Board (ERB) Pension Funds**
—Terry Slattery, Executive Director, PERA
—Rick Scroggins, Deputy Director, ERB
—Carter Bundy, Legislative Director, American Federation of State, County and Municipal Employees, New Mexico
—Christine Trujillo, President, American Federation of Teachers, New Mexico
—Dave Heshley, Executive Director, Fraternal Order of Police, New Mexico
—Eduardo Holguin, Government Relations Coordinator, National Education Association - New Mexico
—Other Employee Representatives (Invited)
- 11:00 a.m. **Update on Recent Legal and Financial Developments Affecting State Pensions**
—Tom Pollard, Ph.D., Staff, Investments and Pensions Oversight Committee, Legislative Council Service (LCS)
—Doris Faust, Assistant Director for Drafting Services, LCS
- 12:00 noon
(Working Lunch) **Establishing Realistic Investment Earnings Benchmarks**
—Robert "Vince" Smith, Deputy State Investment Officer, State Investment Council (SIC)
—Joelle Mevi, Chief Investment Officer, PERA
—Bob Jacksha, Chief Investment Officer, ERB

2:00 p.m. **Update on the Progress of Current or Pending Litigation Involving the State's Investment or Pension Funds and Allegations of "Pay-to-Play", Investment Fraud or Related Matters**

- Frank Foy, Plaintiff in Pending Litigation
- Victor Marshall, Attorney Representing Frank Foy
- Chris Schatzman, General Counsel, ERB
- Steven K. Moise, State Investment Officer, SIC
- Gary King, New Mexico Attorney General (Invited)

5:00 p.m. **Adjourn**

Revised: August 29, 2011

**TENTATIVE AGENDA
for the
THIRD MEETING
of the
INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE**

August 31, 2011

**Park North Building Rotunda
Science and Technology Park, University of New Mexico
801 University Blvd. SE
Albuquerque, New Mexico**

Wednesday, August 31

- 9:00 a.m. **Call to Order**
—Senator George K. Munoz, Chair
—Representative Henry Kiki Saavedra, Vice Chair
- 9:05 a.m. **Welcoming Remarks**
—David W. Harris, Executive Vice President for Administration, Chief Operating Officer and Chief Financial Officer, University of New Mexico
- 9:15 a.m. **Impact of Various Retirement Benefit Plan Changes on Educational Retirement Board (ERB) Pension Fund Solvency**
—ERB Members (Invited)
—Jan Goodwin, Executive Director, ERB
- 12:00 noon **Lunch**
- 1:15 p.m. **Committee Business**
—Approve Minutes
- 1:30 p.m. **Impact of Return-to-Work Legislation on ERB Fund Solvency and Teacher Recruitment**
—Jan Goodwin, Executive Director, ERB
—Mary Boognl, Teacher, Central Consolidated School District, Kirtland, New Mexico
—Don Mitchell, Teacher, Gallup-McKinley County School District
—Joe Macias, Teacher, Gallup-McKinley County School District
- 2:15 p.m. **Impact of Various Retirement Benefit Plan Changes on Public Employees Retirement Association (PERA) Pension Fund Solvency**
—PERA Board Members (Invited)
—Terry Slattery, Executive Director, PERA

5:00 p.m. **Adjourn**

**TENTATIVE AGENDA
for the
FOURTH MEETING
of the
INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE**

**October 27, 2011
Room 322, State Capitol
Santa Fe**

Thursday, October 27

- 9:00 a.m. **Call to Order**
 —Senator George K. Munoz, Chair
 —Representative Henry Kiki Saavedra, Vice Chair
- 9:05 a.m. **Progress Report on Development of Retirement Benefit Plan Changes to
Ensure Educational Retirement Board (ERB) Pension Fund Solvency**
 —Jan Goodwin, Executive Director, ERB
- 11:00 a.m. **State Investment Council (SIC): Proposed Legislation**
 —Steve Moise, State Investment Officer, SIC
 —Vince Smith, Deputy State Investment Officer, SIC
- 12:00 noon **Lunch**
- 1:15 p.m. **Committee Business**
 —Approve Minutes
- 1:30 p.m. **Actuarial Valuation Report and Progress Report on Development of
Retirement Benefit Plan Changes to Ensure Public Employees Retirement
Association (PERA) Pension Fund Solvency**
 —Kurt Weber, Interim Executive Director, PERA
 —John Garrett, Cavanaugh Macdonald Consulting, PERA Actuary
- 3:00 p.m. **Retiree Health Care Authority (RHCA): Plan Design Changes to Ensure
Fund Solvency**
 —Wayne Propst, Executive Director, RHCA
 —Mark Tyndall, Deputy Director, RHCA
- 4:00 p.m. **Legislation Proposed for Investments and Pensions Oversight Committee
Endorsement**
- 5:00 p.m. **Adjourn**

Revised: November 30, 2011

**TENTATIVE AGENDA
for the
FIFTH MEETING
of the
INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE**

**December 2, 2011
Room 322, State Capitol
Santa Fe**

Friday, December 2

- 9:00 a.m. **Call to Order**
—Senator George K. Munoz, Chair
—Representative Henry Kiki Saavedra, Vice Chair
- 9:05 a.m. **Panel Discussion of the Impact on the Severance Tax Permanent Fund (STPF) and Public Schools and Other Capital Projects Financed with Severance Tax Bonds of Proposals to Increase Severance Tax Revenue Flowing to the STPF**
—Steve Moise, State Investment Officer, State Investment Council (SIC)
—Vince Smith, Deputy State Investment Officer, SIC
—David Abbey, Chair, Public School Capital Outlay Council
—Robert Gorrell, Director, Public School Facilities Authority
—Stephanie Schardin Clarke, Director, State Board of Finance
—Robbie Heyman, Bond Counsel, State Board of Finance
- 10:30 a.m. **Legislation Affecting SIC Proposed for Investments and Pensions Oversight Committee (IPOC) Endorsement**
—Steve Moise, State Investment Officer, SIC
—Charles Wollmann, Director of Communications, SIC
—Senator Timothy M. Keller
- 12:00 noon **Working Lunch: Update on Education Trust Fund Investment Returns**
—Robert Watson, Chair, Education Trust Board
- 1:00 p.m. **Committee Business**
—Approve Minutes
- 1:05 p.m. **Legislation Affecting the Educational Retirement Board (ERB) Proposed for IPOC Endorsement**
—Jan Goodwin, Executive Director, ERB
—Senator George K. Munoz

2:00 p.m. **Legislation Affecting the Public Employees Retirement Association (PERA)
Proposed for IPOC Endorsement**

- Kurt Weber, Interim Executive Director, PERA
- Daniel Ivey-Soto, Executive Director, NM Clerks, LLC
- Carter Bundy, Legislative Director, American Federation of State, County and
Municipal Employees, New Mexico
- Diego Arencón, President, Local 244, International Association of Firefighters
- Oscar Arevalo, Administrative Office of the Courts
- Senator George K. Munoz
- Representative Mimi Stewart

4:00 p.m. **Other Legislation Proposed for IPOC Endorsement**

- Mark Valdez, Deputy State Treasurer
- Victor Vigil, Deputy Cash Manager, State Treasurer's Office

5:00 p.m. **Adjourn**

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

**June 9, 2011
State Capitol
Santa Fe**

The first meeting of the Investments and Pensions Oversight Committee (IPOC) for the 2011 interim was called to order by Senator George K. Munoz, chair, on Thursday, June 9, 2011, at 9:10 a.m. at the State Capitol in Santa Fe, New Mexico.

Present

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

Absent

Rep. William "Bill" J. Gray
Sen. Timothy M. Keller
Sen. Steven P. Neville
Sen. Mary Kay Papen

Advisory Members

Sen. Carlos R. Cisneros
Rep. Miguel P. Garcia
Rep. Roberto "Bobby" J. Gonzales
Rep. Rhonda S. King
Rep. Patricia A. Lundstrom
Rep. Jane E. Powdrell-Culbert
Rep. William "Bill" R. Rehm
Sen. John C. Ryan
Rep. Sheryl Williams Stapleton
Rep. Mimi Stewart

Rep. Donald E. Bratton
Sen. Tim Eichenberg
Sen. Stuart Ingle
Sen. William H. Payne
Sen. Michael S. Sanchez
Rep. Shirley A. Tyler
Rep. Richard D. Vigil

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 and posted on the New Mexico Legislature web site.

Thursday, June 9

Senator Munoz welcomed committee members and guests. He asked the members to introduce themselves, which they did. He also reminded them to turn their microphones on and off before and after speaking.

Report on Recent Investment Performance

Steve Moise, state investment officer (SIO) for the State Investment Council (SIC), addressed the members regarding the SIC's investment performance. He began by reporting that the SIC has achieved recent gains of about \$1.9 billion, adding that the improved fund performance resulted in ranking the overall performance in the top 25% of peer funds. He also noted that Vince Smith, deputy SIO for the SIC, would report further on those gains later in the discussion. Mr. Moise continued by advising the members that the SIC is moving toward more external investment account management.

Mr. Moise told the members that, within the last 30 days, the SIC filed several lawsuits in both state and federal courts seeking to hold multiple individuals and a partnership accountable for their role in "pay-to-play" and kickback schemes involving the SIC during the period 2003 to 2009. The suits seek monetary damages and recovery of ill-gotten gains acquired by the defendants at the expense of the state permanent funds. Mr. Moise reminded the members that the authority to engage in litigation came from legislation passed by the legislature. According to Mr. Moise, the New Mexico attorney general and the Day Pitney law firm are handling the lawsuits for the SIC. He noted that the Day Pitney firm has already achieved major financial recoveries in similar lawsuits for the State of New York. He further noted that named defendants include Gary Bland, the former SIO for the SIC; Guy Riordan, a former Albuquerque securities broker and advisor to former Governor Bill Richardson; Anthony Correra, an associate of Governor Richardson's and a former investor whose license was revoked by the federal Securities and Exchange Commission after allegations of insider trading; and Marc Correra, Santa Fe placement agent and son of Anthony Correra. Additional defendants, including 12 placement agents, are named in the lawsuits. Mr. Moise noted that the SIC is also fully cooperating with the U.S. Department of Justice in its investigation of potential wrongdoing.

Noting that other states, including New York, have already achieved economic recovery as a result of the investment schemes perpetrated on their states, members inquired as to the reason it has taken New Mexico, and specifically the SIC, so long to file lawsuits to recover the huge losses suffered by the state's pension funds. Mr. Moise was joined by Evan Land, general counsel for the SIC, for this discussion. Mr. Land explained that the State of New York has a statutory provision, the Martin Act, which provides exceptional powers to that state's attorney general in the investigation and prosecution of cases involving alleged securities fraud. He opined that access to the provisions of the Martin Act was essential in New York's ability to move quickly in its recovery efforts. When asked why New Mexico's attorney general has been

slow in pursuing the cases, Mr. Land replied that the SIC and its staff share in the legislators' frustration at the slow-moving process. Mr. Moise added that the SIC has been working on ways to proceed in bringing to justice those who played a role in the costly and fraudulent investment schemes.

Next, Mr. Moise talked about legislation that was passed during the 2011 legislative session, noting that Senate Bill 86 (Laws 2011, Chapter 9) provided the authority for the SIC to enter into agreements for legal services on a contingency fee basis. Senate Bill 82 (Laws 2011, Chapter 51) provided for the removal of the SIO from four state boards, freeing up the SIO's time for important SIC duties. Mr. Moise said that House Bill 52 (Laws 2011, Chapter 167) provided statutory changes that will allow the SIC to fund the tobacco appropriation when directed to do so by the legislature. He advised that the SIC would be seeking the committee members' endorsement of a short list of legislative priorities for the 2012 legislative session.

Next, Mr. Moise told the members about some governance changes for the SIC that have taken place since December 2010. Among those changes are the new SIC members, including: Governor Susana Martinez; Ray Powell, commissioner of public lands; Secretary of Finance and Administration Richard May; and Scott Smart, vice president of business affairs for Eastern New Mexico University. Mr. Moise noted that there remain two vacancies on the council. He told the committee members that the SIC operates four committees, the Audit, Governance, Investment and Private Equity Advisory committees.

Mr. Moise continued by telling the members that the SIC has made several additional governance changes, including the adoption or updating of 14 policies and procedures. He said that 49 of the 82 recommendations made to the SIC by the consulting group Ennis Knupp have been implemented or are in the process of being implemented. He further noted that all of the SIC staff have signed a staff code of ethics and the SIC is committed to a philosophy focused on its "Mission, Vision and Values".

Mr. Smith spoke to the members about the performance of the SIC's funds since December 2010. He started by saying that the SIC's performance goal is for the funds to perform within the second quartile or better. He noted that changes in investment strategies are intended to help the funds meet the performance goal. The SIC has adopted investment philosophies viewed by the SIC as critical for the SIC's investment program. Additionally, there has been investment staff restructuring consistent with the performance goals in mind. Mr. Smith said that, with guidance from RV Khuns & Associates, a Portland, Oregon-based consulting firm, the SIC has made changes to its asset allocation. He added that the SIC is receiving investment consulting services from both RV Khuns & Associates and LP Capital, private equity consultants. Mr. Smith continued by telling the members that nine external investment managers' contracts with the SIC have been terminated, primarily for underperformance. Additionally, several requests for proposals (RFPs) for services have been issued by the SIC, with more pending, as the SIC is increasing its external management.

Referring to the SIC's investment performance, Mr. Smith directed the members' attention to page 7 of the SIC handout. He noted that the funds grew from \$13.999 billion to \$15.350 billion for the year ending on March 31, 2011. He further highlighted the information in the handout by noting that, for the same period, the land grant permanent funds increased in value by 14.2% and the Severance Tax Permanent Fund increased by 14.3%. He told the members that the one-year returns for the funds put them in the top quartile of peer funds. He noted that previously the funds had performed in the lower bottom quartile, so the improved performance reflects a positive move toward the median.

Next, Mr. Smith spoke at length about the SIC's investment philosophies and beliefs. He said that the SIC sees institutional investing as a "global" endeavor, long-term in nature and requiring patience and steadfastness, and that the economic environment is a major driver of asset returns. Consequently, the impact of economic conditions and direction must be understood and monitored. He also opined that valuation plays a significant role in determining asset returns and as such should be monitored and managed.

According to Mr. Smith, the SIC's beliefs related to portfolio construction include the belief that asset allocation is the primary determinant of the SIC's portfolio's return. Following asset allocation in determining portfolio performance is strategy selection and asset class construction. Lastly, manager performance related to meeting benchmarks has the least impact on long-term portfolio returns. Mr. Smith told the members that the SIC believes that asset allocation is a policy decision that must be arrived at by consensus and directly by the primary fiduciaries of the funds. He said that portfolio construction and implementation should be the focus of a core group of trained and seasoned investment professionals. Lastly, he said that responsibilities and accountability must be clearly understood by all involved.

In its efforts to move toward portfolio management consistent with the SIC's investment philosophies and beliefs, Mr. Smith said that the SIC is focusing on reducing its dependence, within established constraints, on domestic-based investments. He explained that greater economic growth, and therefore greater potential returns, exist outside of the United States. He further explained that the majority of opportunities in the world's stock, bond and real estate markets exist outside of the United States. He opined that by investing in these diverse markets, greater diversification of the SIC's portfolio can be achieved and greater returns for the same risk can be achieved.

Next, Mr. Smith said that the SIC intends to reduce its dependence on publicly traded equities as a return driver. This will involve increased diversification and a decrease in the excess liquidity currently in the portfolio. Mr. Smith said that the focus will be on asset allocation as the primary method of generating returns. Decisions regarding asset allocation will ideally be the result of regular structured studies and reviews conducted by the SIC's investment consultants and the SIC staff. The goal will be to employ an understanding of the economic environment and valuation in portfolio management. All of this will be done with a focus on a professional staff implementing the asset allocation, with a reduction of internal portfolio

management. Instead, the SIC staff will focus on implementation, strategy selection, portfolio construction and investment manager selection.

Next, Mr. Smith directed committee members' attention to the diagram on page 12 of the SIC handout, which depicts economic "regimes" and influence on asset performance. He said this depiction reflects a method for monitoring the economy to determine how it will affect the SIC's portfolio asset performance. He noted that "real return" assets tend to be at an advantage when the economy experiences a higher consumer price index (CPI) and a low-to-average gross domestic product (GDP), whereas fixed-income assets tend to have an advantage when the economy experiences a weak GDP and a low-to-average CPI. Mr. Smith noted that since 1960, for 72% of the time, the economy has been reflecting an average-to-high GDP and a low-to-average CPI. Lastly, Mr. Smith opined that the economy seems to be moving into a period of a higher CPI with a low-to-average GDP.

Members engaged in a discussion regarding the previous asset allocations and management of the SIC's portfolio. Mr. Smith said that previously about 40% of the SIC's investments have been managed internally, with about 60% externally managed. He reasserted that the most effective way to generate high returns is through asset allocation and the least effective way is to focus on benchmarks. In the past, the SIC staff were very focused on benchmarks, but according to Mr. Smith, the staff's direction and focus regarding benchmarks are changing. Members inquired as to where the SIC's assets reside. Mr. Smith responded that the land grant permanent funds represent about two-thirds of the SIC's assets and the Severance Tax Permanent Fund represents the other third.

Members next inquired as to the time frame anticipated by the SIC in recovering losses suffered due to the fraudulent investment schemes. Mr. Land told the members that the SIC is handling the civil side of the recovery lawsuits, and he specified that the SIC has filed suits naming 20 defendants. He said the SIC has one-year, two-year and three-year plans to go after potential defendants. The SIC will proceed to trial, conduct discovery, settle with some defendants, recover losses from those defendants and move on to the next defendant or defendants. Mr. Land opined that the best leverage the SIC has in its effort to recover the losses sustained is to file suit against defendants and force them to spend money defending their cases in court. He noted that the SIC chose to file many of the lawsuits in federal court because discovery and subpoenas are easier to get in federal court.

Members questioned Mr. Smith regarding the SIC's redirecting of investments and reducing domestic investments. He explained that there is the U.S. economy, emerging markets and developing markets. He said the developing markets are primarily in Europe, and he further opined that he sees many opportunities in those markets. He also noted that inflation in the United States is being pushed to higher levels because of the high federal debt.

Next, members inquired as to whether the SIC is still using 8% as its investment rate of return benchmark. Mr. Smith did not answer definitively, but he said that the SIC is probably looking at a slightly lower benchmark. He followed by noting that the SIC conducted an

analysis to determine the benchmark rate of return necessary for its portfolio over the past 20 years. According to Mr. Smith, the necessary rate of return required to generate the objectives of the fund is between 6% and 8%.

When asked for an opinion regarding taking additional money out of the corpus of the fund, Mr. Moise told members that 55 years ago, some very wise legislators created a permanent endowment for the citizens of New Mexico. He noted that New Mexico is one of four states with such an endowment, and the state's endowment is ranked second in value, at \$15.25 billion, behind the State of Alaska's endowment. Mr. Moise strongly suggested that the New Mexico Legislature maintain forward thinking and resist any urge to reduce the value of the fund's corpus, thereby preserving it for New Mexico's future generations as originally promised. He further said that the key is to grow the assets so that, if needed, distributions from the fund can be increased. He emphasized that the state's permanent funds should not be viewed as "rainy day" funds. Mr. Smith concurred with Mr. Moise, saying that if the state reduces the corpus of the fund, it will be crippling its ability to generate more funds each year going forward. Some members followed up by saying that the purpose of the fund has always been to improve education in the state and the fund should be viewed primarily as an endowment for New Mexico's children. Lastly, members requested that information be provided to show how New Mexico's land grant funds compare to those of the other three states with similar funds.

Mr. Moise next spoke about the constitutional restrictions regarding the manner in which the SIC can make investments. He said that, in his opinion, such constitutional restrictions are a barrier inhibiting the SIC's ability to invest in a growth-minded manner while still being guided by the prudent investor standards. Committee members responded, noting that changes to the constitutional provisions would undoubtedly be a "hard-sell" to the voters. Mr. Moise told the members that he would research the investing limits imposed pursuant to New Mexico's Uniform Prudent Investor Act. He also told members that the SIC will put together a chart with information regarding the SIC's portfolio performance and will provide members with information regarding the fees that the SIC is paying for external investment management fees.

Lastly, members asked how the SIC will be restructuring its staff and asked Mr. Moise to provide a copy of the restructuring information to the committee. Some members inquired regarding the process used by the SIC in selecting the Day Pitney law firm to handle the recovery litigation. Mr. Land told the members that in September 2010, after an RFP was issued, the Day Pitney law firm was selected to handle the litigation on behalf of the SIC. A number of committee members expressed serious frustration with what they perceive as stalling and delays related to the SIC's efforts to pursue recovery of the money lost in the bad investment deals. Hearing the members' concerns, Mr. Moise told them that he hopes to be able to provide more clarity on the matter at the next IPOC meeting scheduled for July 27, 2011.

Report on Actuarial Soundness of the Public Employees Retirement Association (PERA) Pension Fund and Recent Investment Performance

Susan Pittard, general counsel for the PERA, addressed the committee regarding the PERA's fund soundness and investment performance. She advised the members that, as of June

30, 2010, the PERA's actuarial accrued liability was \$15.601 billion, the actuarial valuation of assets was \$12.243 billion and the market value of assets was \$10.2 billion. She added that, for the same time period, the PERA's funding ratio was 78.5% and the unfunded actuarial accrued liability stood at \$3.357 billion. Ms. Pittard cautioned the members that the valuation information is nearly one year old, so it does not reflect an accurate picture regarding the fund's current status. She noted that the PERA's valuation information as of June 30, 2011 will be provided to the members at the committee's October 2011 meeting.

Next, Ms. Pittard reminded the members that the PERA "smooths" its market gains and losses over a four-year period. She explained that the process of "smoothing" lessens the dramatic impact of any volatility experienced in the market. She added that the PERA's funding status has recognized two years of losses and consequently has two additional years of the smoothing process and recognizing losses before the losses experienced with the market downturn are fully recognized. She added that the PERA's gains have exceeded the benchmark rate of 8% and are also being smoothed over a four-year period, which means that beginning with the June 30, 2013 valuation report, and absent future losses, the recognition of the recent investment gains will significantly improve the PERA's funded status.

Referring to the handout provided by the PERA to committee members, Ms. Pittard spoke about the PERA's projected actuarial assumptions for FY 2011, including:

1. the actuarial value of assets as of June 30, 2011 will post gains above the 8% benchmark;
2. the fund's amortization period will continue to be infinite;
3. the PERA's funded ratio will drop to about 72%, assuming a \$12 billion fund market value;
4. the funded ratio may bottom out in the high sixtieth percentile with the two additional years of smoothing losses (those losses more than offset the gains achieved since 2009); and
5. additional contributions to the fund, above those shown on the 2010 valuation, will be required.

Ms. Pittard continued by sharing with committee members the PERA board's recommendations to recoup the PERA's fund losses. Among the board's recommendations are a short-term funding fix that would involve increasing the contribution rates for both employees and employers. Specifically, she reminded the members that the PERA board helped craft legislation for the 2011 session to address the underfunding of State General Member Coverage Plan 3, Municipal Police Members Coverage Plans 1, 2, 3, 4 and 5 and Municipal Fire Member Coverage Plans 1, 2, 3, 4 and 5. The legislation would have increased the contribution rates for the referenced members by 2% per year for four consecutive years beginning July 1, 2011 and culminating in a total increase of 8%. The total increased contribution amount would have consisted of the employees contributing one-third of the increase and employers contributing the remaining two-thirds.

Ms. Pittard next reminded the members that, prior to and during the 2011 session, the PERA board developed, endorsed and supported the legislation known as the "Ideal Plan".

According to Ms. Pittard, the Ideal Plan was seen by the board as a means to address the long-term solvency of the fund. The legislation was introduced as Senate Bill 268 and would have provided a second tier of member coverage plans with reduced benefit structures for new members hired on or after July 1, 2011. Ms. Pittard opined that the PERA board worked diligently on the Ideal Plan, which was opposed by special interest groups and ultimately did not pass.

Ms. Pittard told the members that as of May 31, 2011, the PERA assets have a market value of \$12.4 billion. This balance reflects a fiscal year-to-date gain in value of 24%. She reminded the members that the fund's high balance in October 2007 was \$13.8 billion and its low in March 2009 was \$7.6 billion. She further noted that the PERA fund performance as of March 31, 2011 held a ranking in the thirty-seventh percentile of peer funds, meaning all public plans valued greater than \$2 billion.

Joelle Mevi, chief investment officer for the PERA, next spoke to the committee. She began by reminding the members that the PERA funds are 100% externally managed. She next directed the members' attention to the charts on pages 9 through 13 of the PERA handout, which indicate the PERA's asset class composition as of March 31, 2011.

Next, Ms. Mevi directed the members' attention to the executive summary performance report handout provided for the PERA by RV Kuhns & Associates. She noted that the performance update was for the quarter ending March 31, 2011. Ms. Mevi said that equity and fixed-income markets were subjected to a wide array of cross-currents during the quarter as negative international headlines intermingled with the positive U.S. economic reports. Social and political unrest in the Middle Eastern and North African oil-producing countries raised concerns regarding energy and provided a headwind to the global equity rally that began in 2010. By mid-March, the headlines were dominated by stories about the largest recorded earthquake to ever strike Japan, as well as news about the tsunami and nuclear crisis that followed. Fears regarding European sovereign debt were refueled as Portugal's government collapsed and fears of contagion escalated. Despite everything mentioned above, equities finished the quarter with strong returns, as key economic fundamentals improved, corporate activity rose and most international equities posted gains.

Next, Ms. Mevi talked to the members about current market themes. She started with the national unemployment rate, saying that the unemployment rate continues to trend above average, noting that it remains well above the 50-year average. She added that the unemployment rate fell to 8.8% in March 2011, as the four-week average of jobless claims decreased to 389,500, a level generally considered consistent with sustainable employment growth. She further noted that credit constraints on small businesses, which employ half of the national work force, have made it difficult for businesses to increase their payrolls.

Then Ms. Mevi spoke about inflation, saying that core inflation remains fairly muted despite rising food and energy prices. Recent monetary expansion and the federal government's infusion of cash into the system have raised concerns over mid- to long-term inflation

expectations. Having said that, she noted that near-term inflation rates are expected to remain stable.

Regarding the GDP, Ms. Mevi told members that the initial estimate shows that real GDP increased at an annual rate of 2.3% in the first quarter of 2011. However, in the fourth quarter of 2010, the GDP had increased by 3.1%. She said that the deceleration in real GDP during the second half of the year reflects a decrease in federal government expenditures and gross investment. She added that the federal government estimates that the 2011 U.S. GDP growth will be 3.5% to 4.2%.

Referring to the chart on page 14 of the RV Khuns handout, Ms. Mevi explained that the Total Fund Interim Custom Index (Interim Index) is a dynamic benchmark targeted to the PERA's long-term allocation. She said that since 1991, the Interim Index has shown how the PERA fund would have performed if it was consistently invested at its interim target allocation (which changes over time) in the respective benchmark of each asset class. She added that the Long-Term Target Index (Long-Term Index) is the PERA's strategic asset allocation and the asset allocation set forth in its investment policy statement. Beginning with the first quarter of 2007, the Long-Term Index shows how the PERA fund would have performed if it was always invested at its policy target allocation (which changes infrequently) in the respective benchmark of each asset class. Lastly, she noted that both of the above-referenced benchmarks can be used in total fund attribution to measure two components of relative performance: 1) active weight — indicating the cost or benefit of not being at the target allocation; and 2) manager value added — indicating whether an investment manager outperformed or underperformed its asset class benchmark.

Ms. Mevi advised the members that the PERA fund outperformed the Interim Index by 49 basis points, net of fees, for the quarter ending March 31, 2011, returning 4.02% instead of 3.53%. She explained that the fund's performance in this index can be attributed to manager value added, mainly in the domestic equity, fixed income and absolute return portfolios. Additionally, she attributed the fund's performance in FY 2011 and in the 12 months ending on March 31, 2011, to manager value added, again in the domestic equity, fixed income and absolute return portfolios. Ms. Mevi continued by saying that the fund outperformed the long-term target allocation benchmark by 48 basis points, net of fees. She also mentioned that the PERA fund has outperformed the Long-Term Index in seven of the past 10 calendar years.

Ms. Mevi closed by advising the members that the PERA has assembled a watch list of managers it is monitoring to determine if they are meeting the criteria required by the PERA. (The list of managers currently on the watch list can be located on page 26 of the RV Khuns handout. The list is followed by several watch list criteria performance tables.)

There was a discussion regarding how the PERA fund compares to similar peer pension funds. Members asked Ms. Mevi if the PERA could create some informative tables on the subject and post those tables on the PERA web site. She indicated that the PERA staff could post the information.

Next, there was a discussion regarding the PERA's 8% target benchmark. Ms. Pittard noted that the PERA board intends to revisit the use of the 8% benchmark at its next retreat in July 2011. Ms. Pittard noted that the board cannot change the benchmark arbitrarily, particularly without the contribution rates to the fund changing. A number of members expressed concern regarding the use of the 8% benchmark, and Ms. Pittard was asked to provide information regarding the valuation of the PERA fund using a benchmark of 7%. Members also asked for options from the board regarding contribution increases necessary to sustain the solvency of the fund. Ms. Pittard stressed that the municipal fire plan members need an increase to an 11% contribution rate in order to sustain the fund. However, she indicated that the members refuse to discuss the issue. She further noted that the PERA board has spent \$250,000 looking at the options and in the development of the PERA Ideal Plan. Members expressed frustration and difficulty in determining what should be done, partly because the PERA lumps together all of the PERA members in the various plans. Consequently, committee members surmised that the PERA board needs to submit realistic contribution rate information for the various member plans.

Report of Actuarial Soundness of the Educational Retirement Board (ERB) Pension Fund and Recent Investment Performance

Rick Scroggins, deputy director for the ERB, addressed the members. He started by disclosing that the ERB board at its meeting in April 2011 voted to decrease its investment benchmark from 8% to 7.75%. As a consequence, the 2010 unfunded actuarial accrued liability increased to \$4.990 billion and the funding ratio decreased from 65.7% to 63.6%.

Mr. Scroggins next summarized the ERB's investment performance for the 12 months ending on March 31, 2011. He said the fund experienced a net investment gain of \$1.2 billion, which includes a net investment gain of \$347.1 million during the first calendar quarter. He said that the fund's total assets increased from \$8.6 billion in March 2010 to \$9.5 billion as of March 31, 2011, with \$252.5 million in net distributions during the 12-month period.

Mr. Scroggins followed by telling members that over the past five years, the fund returned 4.8% per annum, outperforming its policy index by 1.1% and ranking in the twenty-fourth percentile of the Independent Consultant Cooperative's public funds valued greater than \$1 billion universe. He added that the fund's volatility was 12.1%, which ranks it in the sixty-sixth percentile of its peers over the same time period. The fund's risk-adjusted performance, as

measured by the Sharpe Ratio, ranks it in the thirty-second percentile of its peers. Therefore, he concluded that the fund has produced more return per unit of risk taken during the same period than the median fund in the peer universe.

Mr. Scroggins continued by telling members that for the two-year period ending March 31, 2011, the ERB fund returned 26.4%, outperforming its policy index by 4.8% and ranking in the twelfth percentile of its peers. He added that during the past two years, the fund has reduced its volatility on both an absolute and relative basis, while continuing to produce superior risk-adjusted returns. He added that for the previous two-year period ending March 31, 2011, the fund's volatility was 9.3%, which is in line with the peer group median fund during this period. He added that the Sharpe Ratio for the fund during the period is 2.8% and ranks in the ninth percentile of the fund's peers.

Mr. Scroggins then told the members that for the one-year period ending March 31, 2011, the ERB fund had a return of 13.8%, outperforming its policy index by 2.2% and ranking it in the fifty-third percentile of its peers. He added that the fund's volatility was 9.1% for the same period, which ranked it in the twenty-seventh percentile, and the Sharpe Ratio for that period was 1.5%, a ranking in the twenty-seventh percentile.

Lastly, he told the members that for the quarter ending March 31, 2011, the ERB fund posted a 3.8% return, outperforming its policy index by 0.8% and ranking it in the sixty-seventh percentile of its peers. He added that all of the fund's asset classes were within policy ranges on March 31, 2011.

Mr. Scroggins said that as of March 31, 2011, the ending market value of the ERB fund was \$9,466,216,563. He directed the members' attention to page 10 of the ERB handout, which contains some general facts regarding the ERB, including the number of active, retired and inactive members. Additionally, he noted that information regarding contributions and plan demographics can be found in the handout.

In discussing the ERB's current funding period, Mr. Scroggins reminded members that, with the decreased benchmark at 7.75%, the funding period is 62.5 years. According to the Governmental Accounting Standards Board (GASB), the funding period, also known as the amortization period, should not exceed 30 years. Mr. Scroggins estimates that the ERB's funding period will be in compliance with GASB-recommended standards in 2032, when the funding period will be 28.4 years. He then told the members that the funded ratio (the ratio of the actuarial value of assets to the actuarial accrued liability) stood at 63.5% in 2010. He added that five years ago, the ERB's funded ratio was 75.4%, and 10 years ago it was 85.9%. He said the ratio reached an all-time high in 2001 at 91.9%, but began to decrease as the negative investments experienced in FY 2001 through FY 2003 were phased into the actuarial value of assets.

Mr. Scroggins told the committee members that the ERB had participated in a study comparing the ERB's operations with those of its peers. A summary of recommendations

resulting from the conclusion of the study on June 30, 2010 can be found in the ERB handout on page 13. Highlights of the recommendations that the ERB board voted to accept include:

1. decreasing the investment return assumption from 8% to 7.75%;
2. making revisions to the ERB's post-retirement mortality;
3. making changes to retirement rates at ages 65 to 69 for members with more than 25 years of service;
4. decreasing the salary scale for members with at least 10 years of service from 5.00% to 4.75%;
5. making changes to the individual entry age normal cost funding method by increasing it from 12.48% to 14.09%; and
6. changing the population growth assumption to 0.75% per year.

Mr. Scroggins noted that a list of the peer groups used for the study can be found on page 15 of the ERB handout. He also noted that the study results revealed that the ERB's administration cost is \$89.00 per active member and annuitant, compared to the peer average of \$101. The ERB's total pension administration cost was \$8.7 million.

The committee members commended the ERB board for its decision to lower the benchmark investment target from 8% to 7.75%. When asked what the ERB has done to reduce costs, Mr. Scroggins replied that little has been done to reduce costs because the ERB has many other expenses, including its software upgrade and legal fees. Some members expressed concern that the board is employing too conservative an investment policy.

Lastly, members inquired as to what the ERB is doing to recoup the overpayments it made in error to retirees. Mr. Scroggins said that the ERB has attempted to contact all of the individuals that received payments in error. He added that 80 of the 150 people have been reached. He said the ERB's next step will be sending out a packet to each person explaining how the errors were made. The packets will also include information regarding how the Internal Revenue Service handles such erroneous overpayments. After the people that received the overpayments receive the information described above, the ERB will develop a process by which those people can repay the money. He added that the amount of the overpayments ranges from \$.66 to \$306,264. The ERB plans to issue an RFP for attorney services from firms specializing in this type of issue.

Members asked for a table illustrating the overpayments. Members also requested information regarding all of the lawsuits the ERB is involved in, including which law firms the ERB has and is using and how much it has paid in legal fees.

Adoption of the IPOC Proposed Interim Work Plan

Mr. Pollard and Ms. Faust spoke to the members regarding the committee's interim work plan and meeting schedule. Ms. Faust advised the members of several cost-saving measures implemented by the New Mexico Legislative Council, including meeting announcements and other pertinent information being sent to members via electronic mail instead of through the postal service. She advised that members who wish to continue receiving information via the

postal service should contact her to state their preference; otherwise, they will receive meeting information via email. After a brief discussion, both the work plan and meeting schedule were approved without opposition.

With no further business, the meeting was adjourned at 3:40 p.m.

MINUTES
of the
SECOND MEETING
of the
INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

July 27, 2011
State Capitol
Santa Fe

The second meeting of the Investments and Pensions Oversight Committee (IPOC) for the 2011 interim was called to order by Senator George K. Munoz, chair, on Wednesday, July 27, 2011, at 9:14 a.m. at the State Capitol in Santa Fe, New Mexico.

Present

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

Absent

Rep. William "Bill" J. Gray
Sen. Steven P. Neville
Sen. Mary Kay Papen

Advisory Members

Rep. Donald E. Bratton
Sen. Carlos R. Cisneros
Rep. Miguel P. Garcia
Rep. Roberto "Bobby" J. Gonzales
Rep. Rhonda S. King
Rep. Patricia A. Lundstrom
Sen. William H. Payne
Rep. Jane E. Powdrell-Culbert
Rep. William "Bill" R. Rehm
Sen. John C. Ryan
Rep. Sheryl Williams Stapleton
Rep. Mimi Stewart
Rep. Richard D. Vigil

Sen. Tim Eichenberg
Sen. Stuart Ingle
Sen. Michael S. Sanchez
Rep. Shirley A. Tyler

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 and posted on the New Mexico Legislature web site.

Wednesday, July 27

Senator Munoz welcomed committee members and guests. He asked the members to introduce themselves, which they did. He also reminded them to turn their microphones on and off before and after speaking.

Proposals to Maintain the Long-Term Solvency of the Public Employees Retirement Association (PERA) and Educational Retirement Board (ERB) Pension Funds

Terry Slattery, executive director, PERA, addressed the committee. He began by introducing the PERA board members that were in attendance at the meeting. Mr. Slattery referred to the *Benefit Adequacy Study-Phase I Through IV, Spring 2010* handout produced by Gabriel Roeder Smith & Company (GRS), consultants and actuaries for the PERA. At the request of the committee chair, Mr. Slattery began by discussing the long-term solvency forecast. According to the study, the most recent forecasting simulations indicate that, without changes, the PERA will need contribution increases in all divisions to meet the PERA board's 30-year financial target, unless recent market losses are offset by future gains. Mr. Slattery reminded the committee members that the board continues to endorse and recommend the implementation of the PERA "Ideal Plan", which is viewed by the board as "actuarially sound".

Mr. Slattery referred to page 5 of the study, which provides a comparison of the PERA benefits to benefits of other state pension plans. He concluded that PERA plan benefits are as good or better than similar pension plans, including those in Hawaii, Iowa, New Hampshire, Utah and Wyoming. He noted that with regard to the cost-of-living adjustment (COLA) benefit, although the PERA plan is not identical to that of any other state, it is most similar to Wyoming's. New Mexico's COLA provides that pensions are increased 3% per year, provided a retiree's retirement has been in effect for at least two calendar years, or if the retiree is on disability, for one calendar year. He reminded members that the board's goal as it relates to the COLA is not to increase retirees' purchasing power; rather, it is to maintain benefit levels in relation to the rising cost of living.

Mr. Slattery directed members' attention to page 22 of the study, which depicts the PERA's total normal cost to that of comparable pension plans. As of the June 30, 2009 valuation, the PERA's total normal cost, including all membership plans, is 21.22%. However, the normal cost pursuant to the plan's new eligibility conditions is 20.39%. When compared to the normal cost of the other plans in the study, PERA's normal cost is higher, followed by Hawaii's normal cost of 16.2%.

Mr. Slattery informed members that at its January 2010 meeting, the PERA board established goals and objectives for benefits payable to the PERA members, specifically in

association with the Ideal Plan. The goals and benefits for the PERA's nonuniformed members include:

- 1) a full career should consist of 30 years of service (currently it is 25 years);
 - 2) normal retirement age should be no younger than age 55;
 - 3) benefits eligibility should be based on a sliding scale like the Rule of 85;
 - 4) there should be no early retirement benefits provided;
 - 5) replacement ratios should be approximately 75% from the PERA and 25% from social security;
 - 6) the vesting period should be five years;
 - 7) the COLA should be based upon the Consumer Price Index (CPI) with a 0% floor and a 3% cap;
 - 8) the plan should not contain a hybrid feature like some other state pension plans;
 - 9) the cost sharing of the plan should be one-third employee and two-thirds employer;
- and
- 10) some lower cost plans should be made available for use by small municipalities.

The goals and objectives established for the PERA uniformed members include:

- 1) a full career should consist of 25 years of service;
- 2) normal retirement age should be no younger than age 50;
- 3) benefits eligibility should be based on a sliding scale like the Rule of 80;
- 4) there should be no early retirement benefits provided;
- 5) replacement ratios should be approximately 100% from the PERA and 0% from social security;
- 6) the vesting period should be five years;
- 7) the COLA should be based upon the CPI with a 0% floor and a 3% cap;

- 8) the plan should not contain a hybrid feature like some other state pension plans;
 - 9) the cost sharing of the plan should be one-third employee and two-thirds employer;
- and
- 10) some lower cost plans should be made available for use by small municipalities.

Mr. Slattery reminded committee members of the characteristics of the PERA Ideal Plan for nonuniformed members. The Ideal Plan provides that a member's retirement benefit amount is based on a multiplier of 2.5% of the member's final average salary (FAS) instead of the current 3% multiplier. The Ideal Plan provides for a maximum retirement benefit of 90% of the member's FAS, which is calculated from the member's salary during the last 36 consecutive months of the member's employment. Mr. Slattery noted that providing a high-percentage FAS benefit can persuade some would-be retirees to work longer. When members work longer, they continue to contribute into the plan, and once they retire, they cost less in the form of benefit payouts because they are collecting for shorter periods of time. In sum, Mr. Slattery noted that members working longer periods means actuarial gains for the plan, and actuarial gains lead to plan solvency.

With regard to the uniformed members pursuant to the provisions of the Ideal Plan, a member's retirement benefit amount would be a product of 3.5% of the member's FAS as calculated from the last 36 months of consecutive employment, with a maximum benefit of 90% of the FAS calculation.

Mr. Slattery told the committee that, without exception, the normal costs associated with the Ideal Plan for all plan divisions — state general, state police, municipal general, municipal police and municipal fire — are projected to be at least 2% less than the normal costs of the current PERA plans.

Mr. Slattery closed his remarks regarding the study by noting that it contains an appendix with a Summary of Assumptions used for the study. He then provided the committee members with an additional handout, *PERA Responses to Requests for Information from the June 6, 2011 IPOC Meeting*. At the June 6, 2011 meeting, committee members had inquired as to how the PERA's funding status would be affected if the PERA assumed a 7% rate of return instead of the 8% target assumed currently. The PERA actuaries concluded that for the June 30, 2010 valuation, assuming a 7% rate of return, the PERA's funded status would have decreased from 78% to 70% funded.

The handout also includes PERA's investment performance for the past six years and how the PERA's investment losses are smoothed into the actuarial value of assets from June 30, 2008 to June 30, 2012.

The handout also contains information regarding the average age of the PERA retirees. Average retirement ages for members in all plans range from a low of 46.06 years for municipal

police to 61.94 years for magistrate members, with the state general members average retirement age at 57.91 years.

Committee members had also requested information regarding pending lawsuits that have arisen from legislation affecting the PERA that has already passed. According to the information provided in the PERA handout, two cases have been dismissed and were not appealed by the plaintiffs. Those cases are *David Archunde v. PERA and the City of Albuquerque*, filed in federal court in September 2008, and *Jack Clough v. PERA* filed in federal court in January 2001. In the *Archunde* lawsuit, the plaintiff alleged that requiring double dippers to make nonrefundable contributions during the period of July 1, 2003 through December 31, 2006 violated the takings clause of the U.S. Constitution. In the *Clough* case, the plaintiff, a "grandfathered" double dipper, was required to make nonrefundable contributions on July 1, 2010. He alleged that the contributions violated numerous laws and constitutional provisions involving age discrimination, takings, equal protection, contract, due process and bill of attainder.

The last case noted in the handout is *Rod Coffman, et. al v. PERA and Governor Richardson*. Like *Clough*, the plaintiff in the *Coffman* lawsuit is a grandfathered double dipper required to make nonrefundable contributions as of July 1, 2010. The plaintiff is raising constitutional claims pursuant to the contract, equal protection and the takings clause of the U.S. Constitution. The difference between the *Clough* and the *Coffman* cases is that the plaintiffs in the *Coffman* case are law enforcement officers, and they are asking for certification of the case as a class action. The PERA filed a motion to dismiss the case in June 2011. No ruling has been issued in the case.

Rick Scroggins, deputy director, ERB, spoke to members regarding the ERB's defined benefit plan. He provided a handout titled *Long Term Solvency of the Educational Retirement Board* dated July 27, 2011. Referring to the handout, Mr. Scroggins reminded the members that the ERB provides members' benefits through a defined benefit plan, noting that this differs from a defined contribution plan, which does not offer its members a guaranteed retirement income. He reminded committee members that the ERB calculates a retiree's benefit amount by the member's FAS multiplied by the member's service credit, multiplied by .0235. The member's FAS is calculated by using the greater of the member's average annual earnings in the last 20 calendar quarters immediately preceding retirement or the member's average annual earnings in any 20 consecutive calendar quarters in which the member has earnings. The ERB calculates retirees' COLA benefits with the first COLA made on July 1 of the year in which the retiree reaches the age of 65 or on July 1 of the year following the member's retirement date, whichever is later. The COLA is tied to the CPI. If the change to the CPI is less than 2%, the COLA will be the same percentage as the change in the CPI. If the change in the CPI is greater than 2%, the COLA will be one-half of the change in the CPI, but not less than 2%, nor greater than 4%. Mr. Scroggins noted that in 2009, for the first time in 54 years, the CPI declined. As a result, the statutory provisions regarding the ERB's COLA required a negative adjustment, which would have resulted in an annual average decrease of \$69.00 in a retiree's pension benefit. House Bill 239 was passed during the 2010 legislative session (Laws 2010, Chapter 81) and amended the

COLA provisions to prohibit a decrease in the retirement benefits of retired members over the age of 65 in the event of a decrease in the CPI.

Mr. Scroggins noted that the current ERB members' contributions do not meet the current benefit payments going to retirees, with a \$98.4 million shortfall in FY10. He noted that in 2000, there were three active members contributing to the fund for each retired member. Additionally, employee payroll has increased 61.65% from 2000 to 2010, while retiree payroll has increased 111.2% during the same time frame. The number of active members has increased 5.34% between 2000 and 2010, while retiree numbers have increased 59.3%.

Mr. Scroggins explained that the ERB plan is considered a "mature plan", and he anticipates a continued increase in the number of retirees, with one-third of the plan's members being retired by the year 2015.

Referring again to the handout, Mr. Scroggins noted that as a result of the ERB's actuarial experience study, as of June 30, 2010, the ERB board was presented with, and voted at its April 2011 meeting to accept, the following recommendations:

- 1) decrease the investment return assumption to 7.75%. In so doing, the unfunded actuarial asset liability increases by \$473 million and the funded ratio decreases from 65.7% to 63.6%;
- 2) make revisions to post-retirement mortality;
- 3) make changes to retirement rates at ages 65 to 69 and with 25 or more years of service;
- 4) decrease the salary scale for members with at least 10 years of service from 5% to 4.75%;
- 5) change to an individual entry age normal cost funding method, increasing the normal costs rate from 12.48% to 14.09%; and
- 6) change the population growth assumption to 0.75% per year, resulting in no impact on valuation results.

Mr. Scroggins told members that the ERB's funded ratio (the ratio of the actuarial value of assets to the actuarial accrued liability) is estimated to be 61.6% in 2011. In 2006, the funded ratio was 70.5%, and the funded ratio reached an all-time high of 91.9% in 2001. It began to decrease as the negative investment experience in the years 2001 through 2003 were phased into the actuarial value of assets. Without any changes to the plan, the funded ratio is not expected to reach the desired 80%. The funding period, also known as the amortization period, should not exceed 30 years. The ERB's current funding period is estimated to be infinite.

Mr. Scroggins explained that the ERB is considering a number of options to reduce the funding period. Included in those options is providing for a minimum retirement age. According to Mr. Scroggins, the ERB does not currently impose a minimum retirement age for members. In New York, for example, the minimum retirement age for pension plan members has increased from 55 to 62 for new employees.

Another option is to cap pension benefits. In Illinois, the maximum pension amount for retirees in the state's pension plan has been capped to \$106,800 (FICA wage limit) and the payout is based on the member's highest salary during eight consecutive years of the last 10 years prior to retirement. The ERB plan does not currently provide a cap for benefit payouts.

A third option under consideration by the board is to increase contributions to the fund. The ERB is in the process of phasing in employee and employer contribution increases that will result in increasing employee contributions from 7.6% in FY05 to 7.9% in FY09 and increasing employer contributions from 8.65% to 13.9% by FY13. It is noted that for FY12, employees earning more than \$20,000 are contributing 11.15% and the employer is contributing 9.15%.

Another option under consideration is the reduction of the actuarial assumed rate of return. As noted before, the ERB board has already reduced the rate to 7.75% from the previous target rate of 8%.

The ERB board wants to continue on a path to actuarial soundness, including an 80% funding ratio and amortization of the unfunded actuarially accrued liability within the desired 30 years. Primary to the board's goals are sustainable retirement benefits without a reduction for current retirees. The board also believes the burden should be shared by both current and future members.

Mr. Scroggins reminded the members of the committee that the ERB hired the consulting firm Research & Polling, Inc., to conduct a survey of active ERB members. The purpose of the survey was to find out what, if any, support the polled members might have for certain changes to the ERB plan.

According to the ERB, members responding to the survey are willing to:

- 1) increase current member contributions by 0.5%;
- 2) change the FAS from five years to seven years;
- 3) implement a minimum retirement age of 60 years for unreduced benefits;
- 4) implement increased multipliers with continuing additional years of service; and
- 5) implement a minimum retirement age of 60 years for members to receive any retirement benefits.

Lastly, Mr. Scroggins told members that, at the direction of the board, the ERB staff is currently working with GRS to examine the potential impact of various combinations of plan changes and assumption factors. The elements being examined include:

- 1) the multiplier;
- 2) member and employer contributions. GRS has been asked to look at increasing employee contributions to 9.9% and employer contributions to 13.9%, both consistent with the board's recommendations last year;
- 3) changing the FAS to seven years or an average of entire employment time;
- 4) implementing a minimum retirement age;
- 5) changing the COLA; and
- 6) changing the vesting period to 10 years.

Mr. Scroggins said the ERB staff hopes to report its findings to the board on August 12, 2011. The ERB will then report the board's decisions and other information to the IPOC.

The chair asked IPOC members for questions for Mr. Slattery or Mr. Scroggins. A discussion ensued regarding the PERA board's endorsement of the Ideal Plan, with Mr. Slattery stating that the PERA board still recommends the Ideal Plan. He said the board prefers the Ideal Plan to the current two-tier plan in place. He further noted that the board would apply the provisions of the Ideal Plan to all members not yet vested as of July 1, 2012, which represents 40% of the PERA members.

Discussion continued with members noting that the PERA board also recommends increasing contribution rates. Members expressed concern over increasing the employers' contributions to a rate of 20%. Some members asked if the legislature's Retirement Systems Solvency Task Force had endorsed the Ideal Plan. The chair of that task force, Representative Stewart, noted that the task force did not endorse the Ideal Plan. Rather, the task force sent the Ideal Plan to the IPOC for review and possible endorsement. When asked if the PERA board involved the PERA members in the development of the Ideal Plan, Mr. Slattery responded that the members were not involved.

Committee members inquired as to the status of the PERA and ERB members' pension benefits rights, asking if those rights are considered statutory rights or constitutional rights. Committee members recognized that the issue is unresolved and only speculative until determined by a court.

Committee members discussed whether the governor would place the issue of changes to the PERA plans on the call for the special session in September 2011. Mr. Slattery stated that the PERA board is waiting to see what items the governor places on the call.

Returning to the topic of increasing contributions to the plan, committee members asked Mr. Slattery if the PERA board would consider an increase in contribution rates less than its recommended 8%. Mr. Slattery responded by saying yes, and perhaps increments of 0.5% could be considered. He added that the PERA board is not comfortable changing benefits structures for current PERA members.

Carter Bundy, legislative director for the American Federation of State, County and Municipal Employees (AFSCME) in New Mexico, presented the members with a handout dated July 19, 2011. The handout is a memorandum on the topic of pension solvency and reform ideas. The ideas represent suggestions from the AFSCME, although Mr. Bundy clarified that the AFSCME cannot speak for any other union.

Mr. Bundy explained that the memo before the committee is divided into three major sections: major changes, which should generate significant savings to the PERA funds; smaller changes, which may primarily be helpful for policy reasons but which also may have a beneficial impact on the PERA funds; and defensive positions, which are essentially preservation of the status quo. He clarified that none of the ideas worsen the financial situation for the PERA, and almost all of them help it at least marginally.

Mr. Bundy said that it is the hope of the AFSCME that a core group of legislators from both parties, in both chambers, will take these ideas and ask for an actuarial study of them. Pension reform is complex and has many interested parties, so lining up broad support for a specific plan well ahead of the next session will prevent the kind of meltdown that invariably happens when legislation as complex as this is amended "on the fly" during the session.

Mr. Bundy proceeded to outline the major savings recommendations, noting that most of the experts who have testified over the last few years at the interim committee hearings have consistently said that there are three major ways to reduce liabilities: require and/or motivate people to work longer; reduce and/or delay COLAs; and lower the multiplier (the number that, multiplied by final average salary and years of service, equals the final pension benefit). Mr. Bundy suggested that a fourth concept be included in this "major savings" category: expanding the number of years used to calculate FAS from three years to eight years.

Next, Mr. Bundy suggested a change in the retirement age. He explained that many states use a "Rule of ###" policy, where a member can retire with a certain combination of age and years of service. One of the real problems, especially from a public perception point of view, is that people can graduate from high school, work 25 years at a safe desk job and retire at age 43 with 75% of their FAS. Even if the vast majority of pension funding comes from employees and investment returns, rather than directly from the taxpayer, there is just a sense that it is wrong. He proposed a "Rule of 85" for non-public safety workers, whereby the

combination of age and years of service would have to equal 85. That means that someone starting public employment right out of high school would have to work 33.5 years to retire, or 8.5 more years than the employee currently has to work, so only a few people would ever be able to retire before age of 55. He further explained that someone starting at age 35, which is the average starting age for state employees, would have to work until the person is 60 years of age to meet the Rule of 85.

Mr. Bundy said that the savings realized by these changes will require actuarial analysis, but for non-public safety workers, the minimum number of years required before retirement will be 8.5 years longer than under the 25-and-out system for people who start right out of high school and 3.5 years longer for those same people pursuant to the plan introduced by Representative John A. Heaton, which went into effect last year.

The next recommendation presented by Mr. Bundy was the one to reconfigure the COLA. He clarified that, as with the other ideas and recommendations, the AFSCME asserts that this should only be applied prospectively, opining that both legally and as a matter of basic fairness, there is no way that employers should "bait-and-switch" people they have already hired and certainly no way those who are already vested should have their pension deals broken.

According to Mr. Bundy, a first idea is to tie the COLA to the CPI, with a cap and floor so that neither the retiree nor the state gets hurt too badly by extremes. Social security does this, and even though there are some good arguments that seniors, with heavier health costs, may deserve an even higher COLA than the CPI, those arguments are countered by the fact that Medicare is still such a strong program, at least for those over 65.

Mr. Bundy proceeded with offering the recommendation of lowering the multiplier, explaining that the current formula to figure out the retiree's pension in most plans is to take the FAS, multiply it by years of credited service (expressed in hundredths, so 25 years equals 0.25) and then multiply by a "multiplier", which for many plans, including the state general plan, is 3.0. If a member retires after 25 years of service, the member gets 75% of the FAS. By lowering the multiplier, someone retiring after 25 years would get 60% of the FAS while someone working for 30 years would get 75% of the FAS, and the cap could be raised to 90% of the FAS for someone with 35 years of service. Mr. Bundy opined that such changes would provide incentive for people to work longer through their most productive years.

Mr. Bundy next suggested changing the FAS calculations by using the employee's highest eight years' salary (matching the proposed vesting period) instead of 3.0 for the PERA. He acknowledged that such a change is a controversial idea because it significantly lowers the pension amounts received by future employees.

Next, Mr. Bundy shared some ideas for additional policy changes and smaller savings. He noted that the vesting period could be expanded from five years to eight years. Another idea recommended by Mr. Bundy is to lower or eliminate the guaranteed rate of return on non-vesting employees' contributions even though it may be only a few million dollars a year. It can be

argued that if the PERA does not legally have to pay out the interest on the employee share, it is obligated to the fund not to pay out bonus interest voluntarily.

Another recommendation would be to toughen requirements on members moving to more generous plans. One of the problems in Municipal Fire Plan 5, to which most firefighters belong, is that people can come into the plan from a different plan, log in three years of service and suddenly take advantage of the most generous of all the PERA plans (it pays a multiplier of 3.5 of FAS for each year; most major PERA plans pay a multiplier of 3.0).

The next suggestion presented by Mr. Bundy is to increase contribution rates for the funds that are in the most trouble. Firefighters in particular have been willing to increase their contributions to ensure that future firefighters are able to have a 20-year retirement. He clarified that the AFSCME does not speak for the firefighters.

Mr. Bundy recommended that the plans do not give full-time service credit to part-time workers. Right now, someone can work 22 years on a part-time basis, work three years on a full-time basis and end up with a full-time pension. Mr. Bundy strongly recommends that part-time work be valued as such. Not only does the current system make no policy sense, but, if widely used, it is detrimental to the fund.

Mr. Bundy recommended establishing a consistent "public safety" definition. He opined that not all jobs currently covered by "public safety" are truly the types of jobs that should have a 20-year retirement. There seems to be a fair number of desk jobs that somehow get swept up in the 20-year retirement, and there is simply no policy reason for that.

Mr. Bundy also recommended preservation of some current policies. He recommended keeping the policy banning double dipping. Double dipping is a problem, first and foremost, because the fund takes a big hit when people "retire" earlier than they otherwise would. A nearly unanimous bipartisan coalition resisted the temptation to carve out a number of exceptions last year, but that coalition is being tested by claims that cities, counties, courts and some state agencies can only recruit and retain qualified workers if they allow double dipping.

Next, Mr. Bundy recommended that the contribution rate should not be lowered. If the first priority of pension reform is to ensure long-term solvency, and if future employees' benefits are lowered to do so, it does not make sense to also lower contributions. He opined that it is easier to maintain the current status quo on contribution levels and then lower them if the plan becomes "super-solvent" than it is to find out that a few assumptions were wrong and then try to raise contribution levels.

Mr. Bundy also recommended preserving the employer-employee splits, where employers have agreed to pick up a portion of the employees' contributions. Under current law, local employers are allowed to make an irrevocable decision to pick up part of the employees' contribution. There are questions as to whether these irrevocable decisions would still apply if a new tier of benefits are created. Mr. Bundy opined that this issue does not affect the PERA's

solvency but could result in about a 10% pay cut for tens of thousands of employees around the state. Pension reform is not meant to be a windfall to local government or a huge pay cut for workers; the AFSCME respectfully asks that the legislature take whatever measures are necessary to ensure that current splits stay in place when pensions reforms are considered.

Mr. Bundy stressed that the AFSCME believes that the promises to current employees should be upheld. It is nothing less than a bait-and-switch or a broken promise to change the plans of current retirees and members. People have taken jobs in the public sector in New Mexico and kept them even when they have had opportunities to go to the private sector, federal government or other states, often relying on the promise of the existing retirement plans. That does not even address the strong constitutional and contract claims that will be made by, at the very least, every current retiree and previously vested member.

According to Mr. Bundy, the recent events in Colorado and Minnesota involving changes to those states' pension plans do not directly affect New Mexico law, and some parts of those decisions indicate that where the employer has consistently made a promise, courts will be less likely to uphold a breach of that promise (for example, in Colorado, the lower court ruled that one reason it was legal to change the COLA was because the COLA had changed so many times in the past). Regardless of the legal issues, however, it is fundamentally unfair to change the rules mid-stream on people who guard the jails, nurse the sick and teach the kids.

In summary, Mr. Bundy told the members that the memo provided by the AFSCME presents a strong array of significant, permanent reform ideas and that this is an opportunity to simultaneously address solvency, perception and policy issues in one fell swoop. Starting the first year people are hired under the new proposals, solvency numbers will improve because the solvency number is simply assets divided by current and future liabilities. Liabilities will start going down with the very first set of new employees under these plan recommendations, even in the plans for public safety employees.

In furtherance of the topic discussion, a panel consisting of Christine Trujillo, president of the American Federation of Teachers (AFT), David Heshley, executive director of the Fraternal Order of Police, and Eduardo Holguin, government relations coordinator for the National Education Association (NEA), addressed the committee. Mr. Heshley began by noting that New Mexico's police officers are for the most part members of the PERA, but some are members of the ERB. He noted that the police officers have not received pay raises for quite some time. Consequently, their pay has not kept up with inflation.

Ms. Trujillo presented the members with a handout addressed to the IPOC, the legislature and Senator Munoz, the IPOC chair. The memorandum proposes the repeal of House Bill 854 (Laws 2009, Chapter 127), which, according to Ms. Trujillo and the New Mexico chapter of the AFT, violates the Constitution of New Mexico, unfairly targets a particular group of workers for a pay cut and takes money directly out of the pockets of New Mexico families. House Bill 854 increases the amount of money that employees who terminate employment before retirement can withdraw from the fund. According to Ms. Trujillo, this violates Article 20, Section 22 of the

Constitution of New Mexico, which states that the legislature "shall not enact any law that increases the benefits paid by the system in any manner or changes the funding formula for a retirement plan unless adequate funding is provided". Additionally, Ms. Trujillo noted that House Bill 854 is the subject of pending litigation.

According to Ms. Trujillo, House Bill 854 was part of a budget package that cut school and state employees' pay 1.5% for two years. The legislation increased the workers' payments into their pension funds by 1.5% and reduced by 1.5% the amount that state employers pay into those same pension funds. Ms. Trujillo noted that the affected employees have not received salary increases in a long time. Although employees are not asking for back pay at this time, the current 11.5% contribution rate for employees is too high for members.

Next, Mr. Holguin spoke to the committee members. He provided them with a handout prepared on behalf of the executive director, Charles Bowyer, entitled *NEA-New Mexico Proposals to the Pension Oversight Committee*. According to Mr. Holguin, and indicated within the handout, evidence presented to last year's Retirement Systems Solvency Task Force does not indicate that the Educational Retirement Fund is in crisis or insolvent. To the contrary, the report of Buck Consultants indicated that because of its lower normal costs, the ERB is in a better solvency position than the PERA over the long haul. Yet the proposals for changes in the PERA created by its board are changes for new hires only. The NEA urges the legislature to be equally cognizant of current members' needs. Any changes that increase the gap between the PERA benefits and the ERB benefits are politically unacceptable to education employees. Buck Consultants also concluded that delaying any drastic change has very little influence on the ultimate financial solvency on the funds of either the PERA or the ERB.

Mr. Holguin relayed that the NEA firmly believes that Article 4, Section 19 and Article 20, Section 22 of the Constitution of New Mexico make any diminution of benefits to currently vested members of the ERB under current economic conditions unconstitutional. The NEA supports a consensus agreement of the New Mexico Education Partners, stating, "The New Mexico Education Partners will not support any changes to the benefits of currently vested members of the Educational Retirement Board; this includes our opposition to any changes in retirement eligibility for vested members. We will explore support for recommendations that move the Educational Retirement Fund toward agreed upon and verifiable solvency targets."

Mr. Holguin expressed support for incentives, rather than mandatory changes to retirement eligibility, to encourage members to retire later. Such incentives might include: (1) adding an extra year of service credit for each five years that a member delays retirement past full unreduced eligibility; or (2) providing that any member retiring at age 62 or older receive a COLA one year after retirement.

At the conclusion of Mr. Holguin's prepared remarks, there was a discussion about the items on which employees/members are willing to agree. Some committee members asked if the LCS staff could draft legislation reflecting all items agreed upon by employee/members in the hopes of the committee proposing and endorsing legislation. The chair added that it would be

beneficial to set aside one meeting of the IPOC to meet with the various board members to gain consensus on the solvency issues.

Update on Recent Legal and Financial Developments Affecting State Pensions

Mr. Pollard and Ms. Faust spoke to members about legal and financial developments affecting state pensions. Mr. Pollard began by advising members that on July 8, 2011, the Governmental Accounting Standards Board (GASB) proposed changes in pension accounting and financial reporting standards for state and local governments.

According to Mr. Pollard, and detailed in the handout he provided, the GASB's stated goals are to improve the visibility and quality of pension information in governmental financial statements and to encourage intergenerational equity. The new rules require the following:

- 1) unfunded pension liabilities will now appear on the employer's balance sheet, rather than in the notes as is now the case;
 - a. an employer's unfunded retirement obligations will be reported on its balance sheet, and pension expense will hereafter be reported in the operating statement;
 - b. long-term pension liability will be reported like long-term bond debt liability;
and
 - c. annual pension expenses using new GASB calculations will become far more volatile and may be impractical to budget. Many employers will face "sticker shock" if they attempt to fully fund the actuarially calculated cost under these new standards;
- 2) lower actuarial discount rates will apply for most plans, which will increase liabilities and pension expenses;
 - a. where investment fund assets exist to fund all future obligations, the expected investment rate of return used now can continue to be used;
 - b. where assets are insufficient, i.e., where investment assets and their earnings will be depleted by the benefits, the effective discount rate for that unfunded portion will be an AA tax-exempt bond index rate (which is around five today);
 - c. those two rates will be blended by the actuaries. Seriously underfunded plans, and especially unfunded other post-employment benefits plans, will have the lowest discount rates and thus the (relatively) higher reported liabilities and costs; and
- 3) shorter amortization periods will be allowed for unfunded liabilities, which will also increase pension expenses;

a. amortization of unfunded liabilities, which now can be stretched out over 30 years, will be tightened up significantly;

b. in general, unfunded liabilities may be amortized over the average remaining service lives of incumbent employees, which are usually 12 years to 15 years (one-half of 25-year and 30-year careers and one-half of current amortization periods), and certain changes for retirees will be expensed immediately; and

c. the net impact overall on current pension solvency analysis is similar to refinancing a 30-year mortgage with a 10-year or 15-year amortizing note; annual payments required to amortize unfunded pension liabilities will go up; and

4) large pension funds are scheduled to implement the new rules beginning in July 2012.

Ms. Faust told the members that states are making changes to their respective pension plans, but the unanswered question remains, "Is it constitutional?"

In Minnesota, the legislature enacted omnibus changes to multiple plans. In an ensuing legal challenge, the court found that the changes did not violate the state or federal constitutions. In its findings, the court specified that pension plan benefits are not a contractual right unless they are so specified in a specific statement. Unlike in the Constitution of New Mexico, the Minnesota constitution does not confer a property right in pension benefits to state employees.

In Colorado, a court reviewed similar claims to those alleged in the Minnesota case, with similar results. The plaintiffs in Colorado asked the court to invalidate the legislative change to the COLA. However, the court found no contractual right in the COLA benefit because the COLA had been changed on so many occasions prior to the disputed change. Notably, the court in the Colorado case also noted the dire situation faced by the Colorado pension plan.

Establishing Realistic Investment Earnings Benchmarks

Joelle Mevi, chief investment officer, PERA, spoke to the members regarding realistic investment earnings benchmarks. She provided a handout dated July 27, 2011. She began by noting that the starting point in constructing a realistic earnings benchmark is the actuarially assumed target rate of return, which for the PERA is 8.0%. The next steps are to allocate investments into assets that will achieve the 8.0% return while assuming the inherent risks of those assets; construct a diversified asset allocation by using capital market assumptions and economic forecasts; and seek to reduce portfolio volatility by diversifying return streams, e.g., investing in non- or low-correlated assets. The goal is an optimal risk-versus-rewards balance, given certain risk tolerance levels.

Ms. Mevi directed the members' attention to a chart on page 2 of her handout, which depicts a pension risk framework, noting that the biggest and primary risk is that assets do not support the liabilities. She noted that further information provided in the handout explains the asset class correlation matrix, which depicts how different asset classes correlate to each other.

According to Ms. Mevi, capital market (CM) assumptions are the most widely used tools in the management of institutional portfolios. The asset class behaviors that CM assumptions estimate, like risk, return and correlation, are widely accepted as the most powerful drivers of the total fund return over the long run. Consequently, the mix of asset classes, as well as the risk, return and correlation associated with them, is the most powerful driver of total fund returns over the long run.

Ms. Mevi explained that risk, return, correlations, diversification and asset allocation all combine to construct an "efficient frontier". She then noted that the handout includes detailed information regarding the PERA's 2011 efficient frontier, including a comparison of the PERA's optimal portfolio for years 2005, 2009 and 2011.

Ms. Mevi concluded her presentation by telling members that the PERA retirement funds are diversified across non-correlated asset classes that are both passively and actively managed. The combination of assets and a management mix is designed to achieve risk-adjusted returns sufficient to meet the actuarial target rate of return over the long term. She added that CM assumptions (10-year annualized) and the fund's efficient frontier are updated annually. An asset/liability study will be conducted by R.V. Kuhns and Associates in late 2011 following the completion of the FY11 actuarial study. Lastly, on July 28, 2011, the PERA board will take action on an actuary recommendation to reduce the target rate of return assumption to 7.75% from the current 8.0%.

Bob Jacksha, chief investment officer, ERB, next addressed the committee. He provided the members with the handout, *Establishing Realistic Investment Earnings Benchmarks*. He began by noting that the ERB's returns have recently been very similar to those of other pension plans.

Mr. Jacksha explained the development of asset class assumptions and provided information regarding the current asset class weights and indexes used to calculate the current ERB policy index. He explained that inflation is an important component of the ERB's asset allocation assumptions, and it is a building block for projecting returns in stocks, bonds and commodities. Measures for inflation include the CPI, the Producer Price Index and the treasury inflation protected securities break-even inflation. Mr. Jacksha said that the ERB is projecting 3% inflation over the next five to seven years.

Mr. Jacksha directed the members' attention to page 17 of the handout, which contains a chart illustrating the updated expected return for 2011 CM assumptions, pointing out that the ERB expects a compounded return for 2011 of 8.1% for the next five to seven years, down from the 8.9% in 2010.

Robert "Vince" Smith, deputy state investment officer, State Investment Council (SIC), joined the discussion by explaining the SIC's returns expectations for the land grant permanent funds. His presentation was accompanied by a handout dated July 27, 2011. Mr. Smith explained that the SIC is undertaking an asset study in the normal course of its management of

the permanent funds. The target rate of return in its investment portfolio is an integral part of that study. He added that the SIC staff has produced an analysis of portfolio objectives. The purpose of the analysis is to help guide the SIC investment portfolios that are expected to meet the objectives of the permanent funds with reasonable investment risk. Mr. Smith next explained the permanent funds' explicit and implicit objectives:

- 1) providing for the statutory distributions to beneficiaries;
- 2) protecting the corpus from inflation; and
- 3) providing for some real growth of the corpus.

Mr. Smith explained the contents of the handout, telling committee members that his intention is to answer three questions:

- 1) What level of return was necessary to achieve the funds' objectives in the past?
- 2) Using history as a guide, and making assumptions regarding the future, what level of return might be necessary for the funds to achieve their objectives in the future?
- 3) Once the necessary rate of return is understood, what level of investment risk is necessary to achieve that rate of return?

Mr. Smith directed IPOC members' attention to page 6 of the handout, which depicts the historical required rate of return model, noting that the results indicate the need to make a rate of return between 6.0% and 8.0% in order to meet the funds' goals.

Next, he directed members' attention to page 11 of the handout, depicting the "Forward-Looking Model", pointing out the statutory distributions assumptions of 5.5% and inflation of 2.5%. He noted that this model backs up the assumptions and information in the historical model. He concluded that using the noted assumptions, the forward-looking model produces similar results to the historical model. He further concluded that income for the State Land Office is a critical component and bears great analysis. He added that returns from the investment portfolio become increasingly important in maintaining the fund's corpus.

Mr. Smith concluded by telling members that the current low rate of "risk-free" return structurally lowers total return available at every risk point. In consideration of the condition of the investment markets, the SIC reduced the target rate of return for the permanent funds from 8.50% to 7.50%. This still makes for a vigorous return target. Achieving the risk premium will be critical; interest rates (and therefore the "risk-free rate") are expected to rise going forward; but statistically, it will be difficult for rates to rise enough in the next 10-year period to offset a major disappointment in risk premiums achieved.

The SIC recognizes that the investment markets are changing and that the portfolio must change with them to achieve the targeted rate of return with a reasonable amount of investment risk.

After a 30-year period of steadily declining U.S. and global interest rates, rates are expected to begin to climb back toward longer-term averages. Fixed income investments that are purchased (or owned) today will produce low rates of return in that type of environment.

Economic growth in the U.S. and other developed nations, where the bulk of SIC portfolios are invested, will likely underperform relative to the last three decades. To a degree, this will constrain growth in the equity markets.

Higher rates of inflation are expected to occur in the U.S. The U.S. dollar may show persistent weakness against a global basket of currencies. This affords an opportunity in foreign-currency-priced investments for those investing with U.S. dollars.

Update on the Progress of Current or Pending Litigation Involving the State's Investment or Pension Funds and Allegations of "Pay-to-Play" Investment Fraud or Related Matters

Frank Foy, plaintiff in pending litigation, along with Victor Marshall, Mr. Foy's attorney in the litigation, addressed the committee. Mr. Foy opened his remarks by saying that he believes New Mexico needs to "clean house" because pay-to-play has been a big problem in the state for a very long time. He recommended replacing all management at the SIC and the ERB, leaving no one in place that was hired or appointed during Governor Bill Richardson's administration. Mr. Foy opined that people like Steven Moise of the SIC and Jan Goodwin of the ERB should resign because they have conflicts, although he did not elaborate on the nature of the alleged conflicts. Notably, following Mr. Foy and Mr. Marshall's remarks, many legislators took great issue with Mr. Foy's call for the resignation of anyone hired or appointed during the Richardson administration. Many legislators expressed total support for Mr. Moise, who was in attendance at the meeting. Some legislators thanked Mr. Foy for his courage to come forward with the allegations of pay-to-play but, nonetheless, disagreed with his call for the resignations.

Mr. Marshall identified himself as counsel for Mr. Foy and the State of New Mexico since July 14, 2008, when Mr. Foy filed his first lawsuit pursuant to New Mexico's Fraud Against Taxpayers Act (FATA). The act provides for the filing of a civil suit for actions that occurred on or after July 1, 1987. The act further provides that a person may bring a civil action for a violation of Section 3 of the FATA on behalf of the person and the state. The action shall be brought in the name of the state, and the person bringing the action shall be referred to as the qui tam plaintiff. Once filed, the action may be dismissed only with the written consent of the court, taking into account the best interests of the parties involved and the public purposes behind the FATA.

Mr. Marshall told the committee members that when Mr. Foy initially filed his lawsuit, Mr. Marshall and Attorney General Gary King discussed the limited resources within the

Attorney General's Office (AGO) to pursue the litigation. Mr. Foy said that, at that time, he and the attorney general were in agreement, and Mr. Marshall proceeded with the litigation, while the attorney general filed an amicus brief in support of a couple of the pending issues, including the issue of retroactivity put forth in the case.

Mr. Marshall continued the discussion by explaining that in his opinion, many courts do not fully understand the provisions of the FATA, particularly the lower courts, and notably on the question of retroactivity as it applies in the Foy case. Mr. Marshall then suggested that the IPOC consider passing a resolution asking the New Mexico Court of Appeals to grant the appeal of the case as soon as possible and to rule that the statute as written is both constitutional and representative of the legislature's intent. Committee members discussed the suggestion of writing a letter to the court. Members expressed concern over intruding or appearing to try to influence the work of the court. After a lengthy discussion of the matter, members voted without objection on a motion to direct the LCS staff to draft a letter on behalf of the committee to the court of appeals apprising the court of the legislature's specific intent to provide for the retroactive application of the provisions of the FATA and advising the court that the committee members are in full support of the actions being taken in the pending litigation.

Mr. Marshall opined that the attorney general should delegate the authority to proceed in the litigation to the SIC and that the SIC should start a new request for proposals (RFP) process in the search for a law firm to represent the state in the litigation. Mr. Marshall alleged that when the SIC hired the Day Pitney firm, the hiring process was flawed. In discussions that followed, the SIC denied employing a flawed process in the hiring of the Day Pitney law firm.

Additional discussions focused on the role of Mr. Foy as the "whistleblower" and plaintiff in the suit. Some members expressed concern over the potential for Mr. Foy to receive a large sum of money in the case, as well as the large attorney fees that may be collected by Mr. Marshall, even if he does not spearhead the litigation going forward. Mr. Foy could receive between 25% and 30% of the recovery in the case. Committee members voiced appreciation for the efforts and courageous nature of Mr. Foy's actions on behalf of the state, as well as the work already performed and expenses incurred by Mr. Marshall, but they still questioned the validity and extent of the potential reward for the efforts. Most members seemed to stand behind the objectives of the FATA, in spite of questions regarding the realities of litigation brought pursuant to the statute.

Chris Schatzman, general counsel, ERB, provided an update on the lawsuits for recovery of lost investment money. He provided a handout with an overview of the cases in which the ERB is involved.

Mr. Schatzman advised that the update includes those matters in which the ERB has filed a lawsuit as a plaintiff or has joined an action as a representative plaintiff. It does not include actions filed by others, such as actions filed pursuant to the FATA. Cases brought by the ERB include:

- *Aldus Equity Partners, L.P.* The ERB filed a lawsuit against Aldus and related entities, including Renaissance Private Equity Partners, Erasmus Capital, Saul Meyer and other former partners in Aldus in state district court in Santa Fe County on October 18, 2010. Based on additional information it has obtained, the ERB's outside counsel is preparing an amended complaint that will be filed soon. After the amended complaint is filed, the defendants can file motions to dismiss and other dispositive motions; and
- *Austin Capital Management, LTD.* The ERB is a representative plaintiff for public pension funds in a class action lawsuit against Austin Capital Management (ACM); KeyCorp, ACM's corporate parent; Victory Capital Management; another subsidiary of KeyCorp; and certain officers of KeyCorp and ACM Austin Capital in U.S. district court for the southern district of New York. Prior to becoming a representative plaintiff in this action, the ERB reviewed class actions that had been filed or that were being developed for filing. This case was the only one that included non-Employee Retirement Income Security Act of 1974 plaintiffs. The defendants have filed a motion to dismiss, briefing has been completed on that motion and counsel expects the judge to schedule oral arguments after he returns from vacation. Discovery is stayed until the motion is decided.

When asked about the discovery process related to the litigation, Mr. Schatzman told committee members that the ERB has produced everything in its possession. He added that a lot of the information produced is nonresponsive because it is a result of a computer-based word search culminating in voluminous search results. He added that the ERB is using a targeted approach in the litigation and is not going after defendants when evidence against the defendant is not available. Evidence is critical to survive a motion to dismiss, and the ERB will not pursue cases unless it anticipates recovery.

Mr. Moise and Evan Land, SIC general counsel, next addressed the members. Mr. Moise began by thanking committee members for their supportive remarks on his behalf made earlier in the course of the meeting. He reminded members that he serves at the pleasure of the SIC board and can be removed at any time. He added that the highest standards of care and loyalty are his objectives and goals and the objectives and goals of the entire SIC staff.

Mr. Land told members that there could be questions regarding the constitutionality of the retroactivity provisions in the FATA. He noted that two judges have looked at the statute and said that it could not apply to acts prior to the first half of 2007 because of the punitive nature of the treble damages provided for in the act. According to Mr. Land, the SIC wants to pursue the litigation in order to get at the earlier conduct, which may be precluded from litigation brought pursuant to the FATA. Mr. Land explained that the SIC is not bound by the retroactivity constraints because it is not bringing the litigation pursuant to the FATA and its claims are civil in nature.

Mr. Land said that the SIC is pursuing legal action against 19 defendants and intends to use the discovery process to leverage information against those and other defendants and to push defendants to settle in order to avoid massive attorney fees.

Mr. Land assured members of the committee that the process employed by the SIC in its hiring of the Day Pitney law firm was in accordance with the proper processes of issuing an RFP. Additionally, he noted that the Day Pitney law firm has already had proven success in litigation against the very same defendants being pursued by the SIC.

Noting that Mr. Foy is currently suing the SIC, discussion about the SIC and Mr. Foy and his counsel working together became a topic of discussion among the members. Mr. Land expressed encouragement for Mr. Foy's rights pursuant to the FATA. But he noted that Mr. Foy and Mr. Marshall could both be compensated for their time and efforts even if the litigation were led by the attorney general, asserting that the court could rightfully compensate Mr. Foy and Mr. Marshall for their work up to this point.

Attorney General King spoke to the IPOC and presented it with copies of the lawsuit filed by the AGO on behalf of the SIC on June 30, 2011 in state district court. He additionally provided copies of the affidavit Mr. Foy filed in Mr. Foy's FATA case on October 22, 2009. Attorney General King highlighted several sections of the affidavit he considered important to the discussions involving the litigation, particularly with regard to Mr. Foy's knowledge about wrongful acts involving the SIC.

Attorney General King began by telling the members that Mr. Land had provided much of the information for the committee that he had planned on discussing. He reminded the members that the FATA legislation was proposed by the AGO, and he considers it an excellent tool to fight corruption in New Mexico. He noted that the FATA is a broad statute, and unlike other statutes, the relator under the FATA does not have to have first-hand personal knowledge of the crime. Another key aspect and good tool of the FATA is the treble damages provision. That provision can provide for a good settlement result in claims brought pursuant to the FATA. The AGO filed an amicus brief in support of the retroactivity provision of the legislation as passed by the legislature.

Attorney General King noted that Mr. Foy does not have any specific knowledge related to the SIC case. Additionally, Mr. Foy has named many defendants, and Attorney General King opined that it is unclear whether Mr. Foy has the resources to litigate such a large case, and remarked that in cases such as the Foy case, it is pretty clear that the lead litigator should be the attorney general.

Attorney General King addressed the committee members' and others' frustration with the slow pace of the litigation and the perceived inaction by the AGO. He said that part of the delay was due to an ongoing criminal investigation, adding that the AGO is still interested in getting criminal convictions against wrongdoers. He said that three years ago, when Mr. Foy initially

filed the case, the AGO did not know that the State of New Mexico would need to weigh in on the litigation, but that situation has changed.

Attorney General King next discussed the issue of the AGO's conflict of interest as asserted by Mr. Foy. The attorney general expressed certainty that the AGO has no conflict of interest. He advised that in conflict of interest questions, the court looks at rules of ethics for lawyers, specifically whether the representation of a client presents a conflict for the attorney.

There was a discussion regarding the risks and costs of litigation. Attorney General King emphasized that the discovery associated with litigation is expensive for the state because the state agencies must provide the sought-after documents. He reminded the members that the state will not get any of the money lost if there is no recovery. Members discussed the potential for recovery and inquired as to the chances of all parties — the attorney general, Mr. Foy, the SIC and the ERB — presenting a "united front" in the litigation. Mr. Schatzman noted that after lengthy discussion with all parties, it is generally agreed that there are several separate causes of action. He added that he agrees with Mr. Land that Mr. Foy and Mr. Marshall can be compensated for their time and expenses regardless of who leads the litigation going forward.

With no further business, the committee adjourned at 5:15 p.m.

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

**August 31, 2011
Park North Building Rotunda
Science and Technology Park, University of New Mexico
801 University Blvd. SE
Albuquerque, New Mexico**

The third meeting of the Investments and Pensions Oversight Committee (IPOC) for the 2011 interim was called to order by Senator George K. Munoz, chair, on Wednesday, August 31, 2011, at 9:10 a.m. in the Park North Building Rotunda located at the Science and Technology Park at the University of New Mexico (UNM) in Albuquerque, New Mexico.

Present

Sen. George K. Munoz, Chair
Rep. Henry Kiki Saavedra, Vice Chair
Rep. William "Bill" J. Gray
Rep. Larry A. Larrañaga
Sen. Carroll H. Leavell
Sen. Steven P. Neville
Sen. Mary Kay Papen
Rep. Jim R. Trujillo

Absent

Rep. David L. Doyle
Sen. Timothy M. Keller
Sen. John M. Sapien
Rep. Luciano "Lucky" Varela

Advisory Members

Rep. Donald E. Bratton
Rep. Miguel P. Garcia
Rep. Patricia A. Lundstrom
Sen. William H. Payne
Rep. Jane E. Powdrell-Culbert
Rep. William "Bill" R. Rehm
Rep. Sheryl Williams Stapleton
Rep. Mimi Stewart
Rep. Shirley A. Tyler

Sen. Carlos R. Cisneros
Sen. Tim Eichenberg
Rep. Roberto "Bobby" J. Gonzales
Rep. Rhonda S. King
Sen. Stuart Ingle
Sen. John C. Ryan
Sen. Michael S. Sanchez
Rep. Richard D. Vigil

Staff

Tom Pollard, Legislative Council Service (LCS)
Claudia Armijo, LCS
Doug Carver, LCS

Guests

The guest list is located in the meeting file.

Handouts

Handouts and written testimony are in the meeting file and posted on the New Mexico Legislature web site.

Wednesday, August 31

Senator Munoz welcomed the committee members and guests. He asked members to introduce themselves, which they did. Senator Munoz invited David Harris, executive vice president for administration, chief operating officer and chief financial officer for UNM, to address the members.

Mr. Harris welcomed the committee to the UNM campus on behalf of himself and UNM President David Schmidly, who was unable to attend due to a previous commitment. Mr. Harris reminded members about the various schools within the university complex, including the:

- Anderson Schools of Management;
- College of Arts and Sciences;
- College of Education;
- College of Fine Arts;
- College of Nursing;
- College of Pharmacy;
- School of Architecture and Planning;
- School of Engineering;
- School of Law;
- School of Medicine; and
- School of Public Administration.

Mr. Harris invited and encouraged committee members to explore the entire UNM campus.

Next, Mr. Harris told the members that UNM is a large stakeholder in matters under consideration by both the Educational Retirement Board (ERB) and the IPOC. He noted that in 2010, the university made more than \$100 million in contributions to the educational retirement plan, composed of \$53 million contributed by the university and \$47 million by employees. He also noted that currently, approximately 3,300 former UNM employees are retired and receiving benefits. Mr. Harris introduced Helen Gonzales, vice president of human resources for UNM.

Ms. Gonzales noted that the UNM Human Resources Department maintains a good working relationship with the ERB. She assured members that the university is very interested in maintaining a strong retirement fund for its employees and retirees, as well as a strong continuing relationship with the ERB.

Impact of Various Retirement Benefit Plan Changes on ERB Pension Fund Solvency

Jan Goodwin, executive director, ERB, began her presentation by introducing ERB board members present at the meeting. She asked Mary Lou Cameron, ERB board chair, to address the committee.

Ms. Cameron thanked the committee for inviting the ERB to the meeting and allowing her to speak. She noted that as chair, she can assure the IPOC that each member of the board takes the member's fiduciary responsibility seriously and invests the time and energy needed to accomplish the work of the ERB. She added that the board considers ensuring the long-term sustainability of the members' retirement benefits as one of its primary duties.

Ms. Cameron said that last year, the ERB was recognized for its willingness to step up, as requested by the legislature, to present a plan design change to the IPOC to assure the Educational Retirement Fund's solvency. While that recommended change did not pass the legislative process, the board has continued its work during this calendar year to look at plan design features that will impact current and future members. She explained that the board's goal is to use factual and sound information in looking at potential plan design changes that will sufficiently improve the solvency of the fund in the shortest period of time possible, while providing minimum disruption to the benefits of the maximum number of the members. Ms. Cameron reminded the committee that the members work hard and must plan for an adequate and deserved retirement.

Ms. Cameron further noted that the ERB recognizes that communicating its work to the plan members is a priority if the board hopes to gain support for any recommended changes. The fund serves approximately 130,000 retired, active and inactive members from the state's education community. Those members expect and deserve transparency from the ERB entrusted to protect and preserve their retirement fund. She followed by noting that the legislature deserves the same.

Ms. Cameron followed by telling members that the ERB is aware that it is unrealistic to expect the legislature to increase the state's contribution higher than the 13.9% promised in 2005. At the same time, the board is cognizant that the active members are in a multiyear stagnant period of little or no significant salary increase, as well as an increase in retirement contributions due to the shift in those contributions from the employer to the employee. Retired members are anxious about the negative impact of the flat Consumer Price Index (CPI) on the cost-of-living adjustment (COLA). In 2011, retirees are seeing a decrease in benefits due to an increase in dental insurance rates.

Ms. Cameron closed her discussion by saying again that the ERB remains committed to a working partnership with the legislature to improve the Educational Retirement Fund's solvency and ensure benefits for all members, retirees, active employees and future members. She thanked the committee again and turned the discussion over to Ms. Goodwin to explain the work and processes that the ERB continues to undertake in reaching its solvency goals.

Ms. Goodwin directed the members' attention to the handout provided by the ERB titled "ERB Solvency Considerations" dated August 31, 2011. The handout contains numerous plans that the ERB is considering as potential changes to the plan. Ms. Goodwin began by explaining the status of the fund as of June 30, 2011. She pointed out that prior to the board's decision to change the investment earnings assumption ratio from 8% to 7.75%, the fund's unfunded actuarial asset liability was \$4.9 billion. However, due to the change in the investment earnings ratio to 7.75%, the unfunded liability on June 30, 2011 stood at \$5.9 billion. The change to the new target investment rate also increased the fund's time period to amortize its unfunded liability from 62.5 years to an infinite date.

Ms. Goodwin next reminded the members that the ERB has set the goal of a funded ratio of 80% within 30 years, which would be in alignment with the Governmental Accounting Standards Board (GASB) Standard 27. Ms. Goodwin reminded the members that on July 8, 2011, the GASB proposed changes in pension accounting and financial reporting standards for state and local governments. She noted that the GASB's stated goals are to improve the visibility and quality of pension information in governmental financial statements and to encourage intergenerational equity. Ms. Goodwin told the members that the ERB, in considering all options and speaking at length with its actuaries, has determined that if only "new" members are affected by plan changes, it will take too long for the changes to make an impact on the solvency of the plan, particularly in light of the GASB changes.

Next, Ms. Goodwin reminded the committee members of the outcome of the phone poll conducted by Research & Polling, Inc., on behalf of the ERB. 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 employees. The results of the survey indicated that 35% of those polled approved of an increase in member contributions, while only 5% approved a decrease in retirement benefit payments for current employees. Of the members polled, 12% did not approve such changes and 4% did not know or declined to respond, while an additional 3% responded that "it depends". The poll revealed that 41% of those asked 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.

In the summary, according to the ERB, members are willing to:

- 1) increase current member contributions by 0.5%;
- 2) change the final average salary from five years to seven years;
- 3) implement a minimum retirement age of 60 years for unreduced benefits;
- 4) implement increased multipliers with continuing additional years of service; and
- 5) implement a minimum retirement age of 60 years for members to receive ANY retirement benefits.

ERB members polled are divided on the issues of increasing current members' contributions by 1.0%. 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 advised members that the ERB is working with its actuaries and developing a solvency matrix in its efforts to compare multiple change scenarios. She directed members' attention to the handout, beginning on page 8 and continuing through page 19. These pages detail the specific potential changes for the plan and the outcomes projected to be associated with those changes. Ms. Goodwin was careful to emphasize that the board has not approved any particular change illustrated in the studies. Rather, the board continues to work with its actuaries to explore all possibilities, with a focus on changes that will achieve the greatest improvement for the fund in within the board's desired time frame.

Many committee members expressed the hope that the board will come up with recommendations that can be supported by legislators. Members inquired as to the ERB's plan for stakeholder input regarding potential changes, particularly in light of the fast-approaching 2012 legislative session, and the even faster-approaching end date for the IPOC's work schedule.

Ms. Goodwin assured the members that the ERB plans to reach out to its membership and gain input regarding changes. There are plans to hold meetings in areas throughout the state and allow members to voice their concerns and ideas and ask questions. The ERB intends to narrow its focus and report back to the committee at its next meeting.

Some committee members pointed out that many of the potential changes under consideration by the ERB would involve changes that would cause there to be substantial differences between benefits offered by the ERB plan and the Public Employees Retirement Association (PERA) plan. Members expressed concern about making the plans extremely dissimilar and the perception of the unfairness associated with one plan being less generous to its members.

Members voiced the desire for the ERB and the PERA to consider the New Mexico taxpayers in their deliberative processes regarding changes to the respective plans.

There was confusion regarding the various studies that would make changes to the COLA and to which members those studies might be applicable. Ms. Goodwin explained that some of the studies apply to all members, some to current members and new hires and some to new hires only. When asked how many of the ERB's current membership are non-vested members, Ms. Goodwin responded that there are 2,000 non-vested members as of June 30, 2011, which amounts to roughly one-third of the plan members.

Discussions turned to the two changes that the ERB actuaries have explained will make the biggest impact regarding the unfunded liabilities of the plan: changes to the COLA and the retirement eligibility age.

Committee members discussed the issues related to making changes to the plan for current and vested members. Many pointed out that some of the potential legal issues are unknown. Some committee members wondered, if a current member's service credit and retirement benefits earned to date remain unchanged and all that is changed applies to future earnings, could that type of change help avoid legal entanglements? Members also expressed a desire to uphold promises made to employees, particularly since workers plan for their futures based upon those promises.

Ms. Gonzales, speaking on behalf of the university, told members that, as the representative of the university, UNM is in favor of shoring up the solvency of the fund. However, UNM employees would favor studies that would impact non-vested employees and studies that would implement a minimum retirement age. She strongly encouraged the ERB board members to reach out to members and get their input so as not to catch them off-guard with changes to the plan.

Impact of Return-to-Work Legislation on the Educational Retirement Fund Solvency and Teacher Recruitment

Ms. Goodwin led the discussion of the return-to-work process related to the ERB. She said that there are currently 1,400 employees that have returned to work. To be eligible, a retired ERB member must take one full year off after beginning retirement before that member can return to work. At the point in which they return to employment, they must contribute to the fund, may receive both their pension payment and their salary, but receive no additional service credit. At any point along they way, the employee can suspend the employee's pension and start earning service credit. According to Ms. Goodwin, the ERB actuaries have deemed the current return-to-work process beneficial, not detrimental, to the plan.

Next, the members heard from three return-to-work teachers invited to speak at the meeting. The teachers addressing the members were Mary Boognl, a teacher from the Central Consolidated School District in Kirtland, New Mexico, and Don Mitchell and Joe Macias, teachers from the Gallup-McKinley County School District.

Ms. Boognl, Mr. Mitchell and Mr. Macias spoke against the requirement in the law requiring them to contribute to the retirement fund. Ms. Boognl pleaded for the members to consider the plight of the low-paid teachers dedicated to serving New Mexico's students. She said that it is ill-advised to remove incentives for gifted and dedicated teaching professionals to seek and remain in teaching positions in New Mexico's schools. She explained her path in becoming a teacher and her willingness to forgo higher salaries in lucrative positions that could have utilized her skills, preferring instead to remain in the classroom. She emphasized the need for the public schools to recruit teachers that love the profession and care more about teaching kids than the size of their paychecks. However, she cautioned that the realities of pay are still issues that teachers must face. She feels lucky to be able to pursue her passion for teaching despite the low pay. Mr. Mitchell and Mr. Macias echoed the sentiments of Ms. Boognl, relaying similar personal stories about their desires to teach and impact the lives of their students.

Members thanked the teachers for their dedication to New Mexico's school children and for the teachers' willingness to speak with the committee. Members shared their understanding of the teachers' frustrations regarding pay and the required contributions to the Educational Retirement Fund. However, generally, the members seemed to agree that the ERB was never designed to be more than a retirement fund.

Impact of Various Retirement Benefit Plan Changes on the PERA

Terry Slattery, executive director for the PERA, addressed the committee. He began by introducing the PERA board members present at the meeting. Board member Oscar J. Arevalo told the committee that the PERA board asked the PERA's actuary to change the investment rate from 8% to 7.75%, and then to analyze the fund under the new investment assumption. He noted that the board received a summary of the analysis two days prior to the IPOC meeting. However, he provided copies of the letter with the summary for the committee members' reference.

The results of the analysis completed by the PERA's actuary, Cavanaugh Macdonald Consulting, LLC, were provided in a letter to Mr. Slattery and the PERA board. Mr. Slattery gave committee members copies of the letter as a handout dated August 30, 2011. Pertinent information provided in the letter is noted below.

The analysis reviewed the long-term solvency of the PERA fund. The actuary was careful to note that the analysis is based on current active and retired members of the five divisions within the PERA and does not include the Legislative Division. The type of analysis used is called a "closed group" projection, as it does not explicitly include information regarding the impact of members hired after the measurement date of June 30, 2010. Mr. Slattery stated that a more meaningful analysis would be an "open group" projection that explicitly includes future members as replacements of active members exiting employment in future years and then performs annual valuations for each future year of the projection period. However, time did not permit performing an open group projection and the actuary recommended that such analysis be performed after completion of the PERA's June 30, 2011 actuarial valuations to provide additional and more definitive information on the expected long-term actuarial condition of the PERA.

In the analysis, the actuary compared the PERA's projected solvency under the current plan provisions of each division to the projected solvency assuming the "ideal" as outlined in the handout and introduced as legislation last session. This plan affects only those hired after June 30, 2010.

The actuary assumed that the current statutory contribution rates remain in effect for all future years and that the current contribution shift sunsets after the fiscal year ending in 2013. Additionally, the actuary used the latest information for the market value of assets as of June 30, 2011.

Under the current plan, which includes the recent change to retirement eligibility for those hired on and after July 1, 2010, the closed group projection results in the market value of assets being depleted in 2041. The plan's solvency is extended by eight years (to 2049) with the implementation of the ideal plan.

Mr. Slattery asked the committee members to consider the following.

The state police plan, based on the June 30, 2010 valuation, had a funding surplus of approximately \$106 million and remains solvent over the projection period under both the current plan design as well as with the implementation of the ideal plan. Under the implementation of the ideal plan, the municipal general plan remains solvent throughout the 50-year period of the analysis. However, the other three plans (state general, municipal police and municipal fire) are not sufficiently impacted by the implementation of the ideal plan to ensure the long-term solvency of these divisions. These three divisions together represent approximately 65% of the liabilities of the PERA. The degree of reduction to the benefits provided to future members hired after July 1, 2010 would need to be far greater in order for the normal cost attributable to those members to be reduced enough for these divisions to maintain solvency throughout the projection period. If solvency is to be sustained through a change in benefits for future employees only, the resulting benefit design for those employees would likely be in the bottom tier of plans in the country considering the benefits earned in relation to the amounts contributed by the members. Absent such a drastic decrease in benefits for future employees, the sources available to improve solvency must also consider the benefits paid to current members and/or increases in contributions. Considering that the State General Division by itself constitutes nearly 45% of the PERA liabilities, the ideal plan would only increase the period of solvency of the entire fund by four years. The actuary suggests considering application of the COLA provisions of the ideal plan to all current members (active and retired) as the basis for determining the future annual adjustments. Based upon the closed group projections, it would appear that such a change, provided that the CPI is similar to historic levels, would sufficiently reduce the expected benefit payments in order to reestablish long-term solvency for the State General Division. Solvency would be improved for the municipal police and municipal fire plans, but there would still need to be further consideration of additional changes to the benefits provided to future employees and/or increases to contribution rates to reestablish long-term solvency.

In closing, the actuary noted that the full open group projections that are scheduled to follow the delivery of the 2011 valuation reports will provide better information on the projected valuation results for the next 50 years, as well as the expected cash flow and long-term solvency. It would also be better to assess further changes to be considered.

Mr. Slattery told members that the PERA will receive its next valuation from the actuary in October 2011. He also told the committee that the PERA board hopes the ideal plan recommended by the board will be introduced as legislation during the upcoming 30-day session. Both Mr. Slattery and Mr. Arevalo emphasized that the board had only received the analysis

from its actuary one day before the meeting. They asked for time to review it and make further recommendations.

There was a general discussion regarding the ideal plan. Members asked to be reminded regarding the concepts and changes proposed in the ideal plan. The discussion continued with committee members asking what additional changes the board is reviewing. Mr. Arevalo noted that making changes to vested members is still "on the table".

The chair reminded the PERA and the ERB boards that the committee hopes to review legislative proposals at the next meeting. He added that the boards need to have plans for solvency. With no further business, the meeting adjourned at 3:55 p.m.

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

**October 27, 2011
State Capitol
Santa Fe**

The fourth meeting of the Investments and Pensions Oversight Committee (IPOC) for the 2011 interim was called to order by Senator George K. Munoz, chair, on Thursday, October 27, 2011, at 9:20 a.m. at the State Capitol in Santa Fe.

Present

Sen. George K. Munoz, Chair
Rep. Henry Kiki Saavedra, Vice Chair
Rep. David L. Doyle
Sen. Timothy M. Keller
Rep. Larry A. Larrañaga
Sen. Mary Kay Papen
Rep. Jim R. Trujillo
Rep. Luciano "Lucky" Varela

Absent

Rep. William "Bill" J. Gray
Sen. Carroll H. Leavell
Sen. Steven P. Neville
Sen. John M. Sapien

Advisory Members

Rep. Donald E. Bratton
Sen. Carlos Cisneros
Rep. Miguel P. Garcia
Rep. Roberto "Bobby" J. Gonzales
Rep. Rhonda S. King
Rep. Patricia A. Lundstrom
Rep. Jane E. Powdrell-Culbert
Rep. William "Bill" R. Rehm
Rep. Sheryl Williams Stapleton
Rep. Mimi Stewart

Sen. Tim Eichenberg
Sen. Stuart Ingle
Sen. William H. Payne
Sen. John C. Ryan
Sen. Michael S. Sanchez
Rep. Shirley A. Tyler
Rep. Richard D. Vigil

Staff

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

Guest Legislator

Sen. John Arthur Smith

Guests

The guest list is located in the meeting file.

Handouts

Handouts and written testimony are in the meeting file and posted on the New Mexico Legislature web site.

Thursday, October 27

Senator Munoz welcomed committee members and guests. He reminded members that the meeting was being webcast and then asked them to introduce themselves, which they did. Senator Munoz asked Jan Goodwin, executive director of the Educational Retirement Board (ERB), to make a presentation to the committee.

Progress Report on Development of Retirement Benefits Plan Changes to Ensure ERB Pension Fund Solvency

Ms. Goodwin greeted the committee and explained that the ERB and staff are reviewing dozens of potential plan change scenarios provided by the ERB actuary, Gabriel Roeder Smith & Company (GRS). She explained that at its September 15, 2011 meeting, the ERB board set minimum guidelines for scenarios. The guidelines include the board's goal of the Educational Retirement Fund reaching an 80%, plus or minus 2%, funded ratio within 20 years and reaching a 100%, plus or minus 5%, funded ratio within 30 years. Ms. Goodwin clarified that the only scenarios provided by GRS and considered by the board must include terms that reach the funding ratios as approved by the board.

Next, Ms. Goodwin directed the members' attention to the handout provided by GRS containing several scenarios that meet the guidelines adopted by the board. Ms. Goodwin explained that, at its October meeting, and after adopting the funding ratio guidelines, the board narrowed its review of potential scenarios to six possibilities. Some of the scenarios under consideration would apply to all ERB members, including both retirees and non-retirees, and some scenarios would exclude retirees in the proposed changes. Ms. Goodwin noted that, according to GRS, when the adopted funded ratio goals are applied to the vast array of potential scenarios, only three scenarios that apply changes only to new hires and current nonvested ERB members meet the funding ratio requirements. Consequently, the board has focused its analysis of plans on changes that are not limited to new hires and nonvested members. Additionally, in an effort to minimize the impact of changes to the plan on members set to retire in the near future, the scenarios being considered contain grandfathering periods of either five or 10 years.

Ms. Goodwin told the committee that the ERB currently has 60,000 members, which include all of New Mexico's kindergarten through twelfth grade public school teachers and public education employees, all higher education employees, with a few exceptions, and some state agency employees. She said that the ERB is fully committed to providing a defined benefit plan for its members, noting that a defined contribution plan is a less cost-effective way to provide retirement benefits. She also noted that the management of a defined benefit plan and the expected returns are superior to those of a defined contribution plan.

After describing some of the features of the different scenarios under consideration by the board, Ms. Goodwin explained that the board has been holding public meetings, referred to as the "Listening Tour", in areas throughout the state, and it intends to hold more such meetings. The meetings are designed to gather input from teachers and the public regarding the potential changes to the ERB plan. She also noted that the public, as well as ERB members, can go on the ERB web site and vote for their preference regarding a plan change. She also said that at its November 21, 2011 board meeting, the ERB would determine its final scenario selection and then present the selection to the IPOC at its December 2, 2011 meeting.

Members of the committee expressed serious concerns about members of the general public who are not also ERB members having access to vote on the ERB plan changes. Committee members acknowledged that public comment, although important and useful for the board in its daunting task of reviewing the plan, should somehow be distinguished from the ERB members' votes and that ERB members' input should be prioritized from that of the general public, particularly because the ERB members will be directly affected by any changes to the retirement plan.

Committee members inquired as to how the ERB compares to other states taking the new Governmental Accounting Standards Board (GASB) reporting standards into account for fund reporting purposes. Ms. Goodwin said that even before the anticipated GASB standards take effect, many states have been making changes to their plans, including increasing contribution rates, in an effort to reach a higher funding status. The ERB has increased its employees' contribution rates to 9.9%, which Ms. Goodwin indicated is one of the highest employee contribution rates in the country. It was noted by committee members that if the state had paid its 13.9% contribution rate as mandated by statute, the ERB would be in an entirely different position regarding funding status today. It was further noted that each one-half percent in employer contributions increases amounts to a cost of \$14 million to the state's general fund. Members further noted that any increase to the employers' contributions is ultimately a bill on the state's taxpayers.

There was a brief discussion regarding the ERB's targeted investment rate of 7.75% , a rate that was recently adjusted downward from the longstanding 8% target investment rate. Members voiced concerns over the ERB's ability to meet the adjusted rate, particularly in today's economic climate. However, Ms. Goodwin noted that over the long term, which is the preferred method for analyzing the investment returns of a pension plan, the fund has exceeded a return rate of 7.75%. For example, for the 20-year period ending June 30, 2011, the ERB investment returns averaged 8.8%, and for the 25-year period prior to June 30, 2011, the return rate was 8.9%.

State Investment Council (SIC) Proposed Legislation

Steven K. Moise, state investment officer, SIC, addressed the committee. He began by thanking the members for the opportunity to speak and then introduced Charles Wollmann, director of communications, SIC, who Mr. Moise said would lead the discussion later regarding

the possible legislative initiatives. Mr. Moise commented that the SIC would make final decisions regarding proposed legislation at its November 2011 meeting. He anticipates that some of the proposals sought by the SIC last year would be revisited.

Next, Mr. Moise talked about the SIC meeting that was held earlier in the week and was attended by several legislators, at which there was a discussion about the state's Severance Tax Permanent Fund (STPF). The discussion focused on the inflow of money into the fund. Two former legislators, Bob Grant and John Bigbee, gave presentations at the SIC meeting. Mr. Moise directed committee members' attention to a handout entitled *NMSIC's Presentation to Investments & Pensions Oversight Committee*, dated October 27, 2011. The handout contains the information presented by Mr. Grant and Mr. Bigbee. The two men contend that New Mexico's STPF is being compromised by a continual diversion of funds for "other purposes". They further contend that, as a consequence of actions by the legislature and the executive between 2002 and 2011, more than \$1.33 billion that should have been deposited into the fund was diverted.

Included in the SIC handout is a memorandum to Rick May, secretary of finance and administration, from Stephanie Schardin Clarke, Department of Finance and Administration interim director. The memorandum from Ms. Clarke provides a history of the STPF along with policy considerations concerning severance tax bonding capacity. Also included in the SIC handout is a memorandum to Ms. Clarke from the Sutin, Thayer & Browne law firm. The memorandum provides additional historical information regarding the STPF and the Severance Tax Bonding Act, including an explanation of how the statutory provisions of the act are applied and used, and a section on the "Statutory Issuance Test", which is described as a test applied to the prior year's deposits into the Severance Tax Bonding Fund. The requirement is that senior long-term severance tax bonds may be issued as long as the debt service on all outstanding and new senior bonds in any future year equals 50% or less of the total amount deposited into the Severance Tax Bonding Fund in the previous year.

In closing, Mr. Moise told the members that Representative Larrañaga asked the SIC to develop a long-term plan to increase the corpus of the STPF. He noted that the SIC would be providing the requested information soon. He added that the policy decision regarding possible increases to the fund would ultimately be made by the legislature, saying that it may want to consider making increases to the fund in a gradual manner while considering other capital outlay sources.

Mr. Wollmann proceeded with a discussion regarding the SIC's legislative initiatives for the 2012 session. He told committee members that the SIC would:

- 1) seek support from the IPOC for a constitutional amendment for the Land Grant Permanent Funds (LGPF) and Water Trust Funds (WTF). He reminded the members that Senator William F. Burt carried Senate Joint Resolution 17 in the 2011 regular session. The joint resolution would increase the standard of care under which the two funds are managed from "ordinary prudence" to a "prudent investor" standard. Additionally, the joint resolution would

increase the SIC's allowable investment in international equity investments from the current 15% to 25%;

2) seek to "clean up" language that currently requires the WTF be "invested as" the LGPF. The SIC asserts that with less than \$45 million in the fund, the WTF should not be invested as a mirror of the LGPF. Rather, long-term strategic investments, such as real estate and private equity, with 10-plus-year commitments are more appropriate for the fund. Mr. Wollmann reminded members that Representative Larrañaga previously carried the bill, which, if passed, will require a constitutional amendment;

3) seek "clean-up" language regarding its governing statute, which may include removing the Private Equity Investment Advisory Committee (PEIA). The SIC will continue to review private equity investments, but it would do so through its existing investment committee rather than through the PEIA;

4) ask to remove specific budget restrictions in House Bill 2 relating to how the SIC best deploys its resources. The SIC will seek a flat budget, but it hopes to be able to allocate its budget according to needs for growing the permanent funds as determined by the SIC; and

5) consider options it has with the Small Business Investment Corporation and, as such, may propose legislation regarding that relationship.

There was a discussion regarding the mechanisms that have pulled money out of the STPF. Mr. Wollmann explained that in 1999, severance tax bonding changed. Prior to that time, 50% of bonding funds were put into the STPF and 50% into the Severance Tax Bonding Fund. After 1999, that changed, and, currently, only 5% is placed in the STPF, with the remaining 95% used for bonding, primarily for capital outlay, infrastructure projects and public school facilities. Members discussed the policy questions associated with decisions about the use and direction of funds into the STPF.

Some members also expressed a preference that elected officials be excluded from membership on the SIC.

Members discussed the 20 state beneficiaries of the LGPF, primarily public schools. Some members voiced the opinion that the public would likely not approve a constitutional amendment regarding the SIC's desired changes to the investment standards imposed for the WTF.

A motion was made and seconded and passed without objection to request that a panel, including the SIC and other appropriate representatives, be invited to the IPOC's December 2, 2011 meeting to discuss the impact on the STPF, public school facilities and other capital outlay projects financed with severance tax bonds or proposals to increase the amount of severance tax revenue flowing into the fund.

Prior to recessing for lunch, the members, upon a motion and without objection, approved the minutes from both the July 2011 and August 2011 committee meetings.

Actuarial Valuation Report and Progress Report on Development of Retiree Benefit Plan Changes to Ensure the Public Employees Retirement Association (PERA) Pension Fund Solvency

Kurt Weber, interim executive director for the PERA, along with John Garrett and Jonathan Craven from the PERA's actuarial firm, Cavanaugh Macdonald Consulting, addressed the members regarding the solvency of the PERA funds. Mr. Weber expressed his appreciation for speaking at the meeting. Mr. Garrett began by directing the members' attention to the handout provided for the meeting. He then led a discussion regarding the actuarial process for the valuation of the PERA and similar funds. Mr. Garrett provided information regarding the distinction between "actuarial funding" and "pay-as-you-go" funding, explaining that actuarial funding occurs over the entire lifespan of the plan, while pay-as-you-go funding occurs each year during the plan's life. The basic funding equation consistently applied among pension plans is:

"contributions plus investment income equals benefit payment plus expenses" ($C + I = B + E$). Provided in the handout are graphs that visually depict these two methods for funding.

In closing, Mr. Garrett advised members of the committee that there are certain things to consider when evaluating the PERA retirement plans, including the four-year smoothing process applied to the fund and how the process affects the valuation. He opined that recent market returns have improved the outlook because most of the 2008 and 2009 investment losses have been offset by market gains in the smoothing process. Mr. Garrett also opined that, absent contribution increases and/or benefit changes, most of the PERA plans will be unable to pay off their respective unfunded actuarial accrued liabilities within the GASB recommended 30-year period.

Members asked for more specifics regarding each of the plans within the PERA and were told that the final version of the valuation would be completed soon and would contain the desired information. Members also inquired as to the impacts of the new GASB reporting standards.

Lastly, members expressed concern with what is viewed as the PERA board's seeming inability to develop and put forth a plan for proposed changes to the PERA plans. Some of the PERA board members present at the meeting expressed frustration with a perception that they are not working on the issue. Board members told the IPOC members that they have been working tirelessly to determine what changes could be implemented to ensure the solvency of the PERA plans.

After a lengthy discussion, the committee requested that the PERA provide its members with accurate information on the solvency challenges facing the retirement fund and that this be done on the PERA's web site as well as in its member newsletter.

Retiree Health Care Authority (RHCA) Plan Design Changes to Ensure Fund Solvency

Wayne Propst, executive director for the RHCA, and Mark Tyndall, RHCA deputy director, spoke to the members. Mr. Propst began by thanking the committee for including the RHCA on its meeting agenda. He said that for the past five years, the authority has felt a sense of urgency regarding its solvency issues. He reminded the members that in 2007, the RHCA was projected to be insolvent in 2014. He noted that the projection got a lot of attention, and the board set out to make significant changes. Next, he asked the members to view page 4 of a handout provided by the RHCA with information regarding the RHCA outlook. Among the highlights is that the RHCA plan is projected to be solvent until 2027. Mr. Propst noted that the RHCA board plans to adopt a five-year sustainability plan that includes a balancing of cost increases among the plan's stakeholders. The five-year plan is intended to ensure that the program remain solvent through shared responsibility, including increasing active employees' contributions, increasing public employee contributions and adjusting the amount paid by current retirees, who pay about 50% of their total premium costs.

Some of the changes being considered include increasing the pre-Medicare plan deductibles; combining the current two plans into one plan; increasing prescription co-payments; increasing active employer and employee contributions by 1% over three years beginning in FY 16; and reducing subsidies for younger retirees.

Mr. Tyndall provided demographic information regarding the makeup of the members of the RHCA. Referring to page 7 of the handout, he noted that roughly 40% of current retirees are younger than 65. He noted that implementing a minimum retirement age for RHCA eligibility could affect the program positively, but it must be balanced with the potential negative impacts it could pose to current employees. Page 8 of the handout provides information regarding the impact that a minimum retirement age could have on solvency.

After a brief discussion, and with no further business, the committee adjourned at 4:45 p.m.

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

**December 2, 2011
State Capitol
Santa Fe**

The fifth meeting of the Investments and Pensions Oversight Committee (IPOC) for the 2011 interim was called to order by Senator George K. Munoz, chair, on Friday, December 2, 2011, at 9:15 a.m. at the State Capitol in Santa Fe, New Mexico.

Present

Sen. George K. Munoz, Chair
Rep. Henry Kiki Saavedra, Vice Chair
Rep. David L. Doyle
Rep. William "Bill" J. Gray
Sen. Timothy M. Keller
Rep. Larry A. Larrañaga
Sen. Carroll H. Leavell
Rep. Jim R. Trujillo
Rep. Luciano "Lucky" Varela

Absent

Sen. Steven P. Neville
Sen. Mary Kay Papen
Sen. John M. Sapien

Advisory Members

Rep. Donald E. Bratton
Sen. Carlos R. Cisneros
Rep. Miguel P. Garcia
Rep. Rhonda S. King
Rep. Patricia A. Lundstrom
Rep. Jane E. Powdrell-Culbert
Rep. Sheryl Williams Stapleton
Rep. Mimi Stewart
Rep. Richard D. Vigil

Sen. Tim Eichenberg
Rep. Roberto "Bobby" J. Gonzales
Sen. Stuart Ingle
Sen. William H. Payne
Rep. William "Bill" R. Rehm
Sen. John C. Ryan
Sen. Michael S. Sanchez
Rep. Shirley A. Tyler

Guest Legislators

Sen. Sue Wilson Beffort
Rep. Bill B. O'Neill

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 and posted on the New Mexico Legislature web site.

Approval of Minutes

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

Friday, December 2

Senator Munoz welcomed committee members and guests. He reminded members that the meeting was being webcast and asked them to introduce themselves, which they did.

Discussion of the Impact on the Severance Tax Permanent Fund (STPF) and Public Schools and Other Capital Projects Financed with Severance Tax Bonds of Proposals to Increase Severance Tax Revenue Flowing to the STPF

The committee members heard from a panel of experts regarding the impact on the STPF, public school construction and other capital projects financed with severance tax bonds of proposals to increase the severance tax revenue flowing into the STPF. The panel included Steven K. Moise, state investment officer, State Investment Council (SIC); David Abbey, chair, Public School Capital Outlay Council (PSCOC); Robert Gorrell, director, Public School Facilities Authority; Stephanie Schardin Clarke, director, Board of Finance Division, Department of Finance and Administration; Robbie Heyman, bond counsel, Sutin, Thayer & Browne, APC; Charles Wollman, director of communications, SIC; and Robert "Vince" Smith, deputy state investment officer, SIC.

Senator Munoz asked Mr. Gorrell to lead the presentation. To aid in the discussion, Mr. Gorrell provided a handout titled *State of New Mexico Public School Capital Outlay Council Public School Facilities Authority 2010 Annual Report*. He reminded committee members that, in response to fiscal conditions, the PSCOC did not fund any new school construction in 2010 and, overall, public school capital outlay decreased by 26% in 2010.

Mr. Gorrell provided a November 17, 2011 memorandum that contained an analysis of the *Outlook for PSCOC Project Economic Impacts to Maintain the Facilities Condition Index Rating*. The analysis provides a funding breakdown and estimate of the employment impacts of school construction funding, including PSCOC projects.

There was discussion about the rising insurance costs for coverage of public school structures. It was noted that the insurance costs keep increasing, even though many of the buildings have been renovated and updated. Mr. Gorrell noted that the older school structures depreciate faster than newer buildings and that this is a continuing problem.

In general discussion regarding the *Zuni* lawsuit, members and guest speakers discussed whether the public school funding formula needs to be reevaluated for needed changes. Members were advised that there is no real "end" to the lawsuit. Rather, in the court order, the state was directed to meet the needs of the schools with the greatest needs first. In 2006, after being reviewed by the court for compliance with its order, the judge said the state had been doing a good job in its efforts to remedy the inadequacies. Senator Munoz noted that staff would be requested to evaluate the funding formula and present their findings to the committee at a meeting in the next interim.

Mr. Moise, Mr. Wollman and Mr. Smith addressed the committee. Mr. Moise reminded the committee members of the newspaper articles and opinion pieces published earlier in the year regarding the long-term consequences of shrinking the corpus of the STPF. He noted that, due to the SIC's concerns over the long-term health of the STPF, the SIC held a meeting on the issue a week prior to the IPOC meeting. The meeting was attended by several legislators and other interested parties. Mr. Moise added that many believe that the intentions of the individuals responsible for the establishment of the STPF have not been continued in practice in recent years. Rather, the practices have changed to the detriment of the fund.

Mr. Moise reminded members that Bob Grant and John Bigbee, former legislators, addressed the SIC and have been on a campaign to increase the flow of dollars into the STPF. Mr. Grant and Mr. Bigbee presented information memoranda on the issue, which included historical facts about the fund, a recap of the deposits made to the fund from 2002 through 2011 and other pertinent information. Copies of the memoranda are located in the meeting file.

Mr. Smith presented the SIC's *Severance Tax Permanent Fund Analysis* handout dated December 2, 2011. He began with a discussion about what is statutorily mandated to be paid from the fund. He talked about possible changes to the flow of dollars into the fund and how those changes could impact the fund's balances. He noted that restoring the contributions to the STPF by 5% could impact the fund positively if done over a period of 20 or more years.

Mr. Smith directed the committee members' attention to the handout, which provides models depicting various scenarios for restoring the fund, including a status quo model depicting the projected value of the fund out to fiscal year 2031 if contribution rates remain the same.

Committee members discussed the inflation rate used for modeling the projected values of the fund. The inflation rate used by the federal government does not include such costly and necessary consumer items such as gasoline, members noted.

Ms. Clarke provided a handout titled *Severance Tax Bonding Program and Severance Tax Permanent Fund* in her presentation to the IPOC. She provided a brief history of severance taxes collected in New Mexico since 1937 and of the severance tax bonding program since 1959.

Ms. Clarke provided the following conclusions for the committee:

- Severance tax and permanent fund contributions are two competing uses of severance tax revenue, and both programs have positive consequences.
- Severance tax bonds finance capital improvements. If wisely spent, these improvements can make important contributions to the New Mexico economy.
- Permanent funds generate distributions that currently finance 11.6% of the general fund recurring revenue. This represents a large "down payment" on the state's government operations.
- Other possible uses of severance tax revenue could have positive effects on New Mexico's economy and include:
 - 1) lowering the tax burden on oil and gas producers;
 - 2) lowering taxes on other businesses and on New Mexico households; and
 - 3) spending the funds in some other way.
- Some states with oil and gas revenue make a direct distribution to households.

There was a discussion regarding the State Board of Finance's decision to give \$65 million to public schools. It was noted that the PSCOC certified the need for the funds to the State Board of Finance, which then directed the money to public schools. Members voiced concern over the process employed by the State Board of Finance and discussed whether that process usurps the powers and duties of the legislature to appropriate state funds. Some members requested information, including reports that detail the use of the funds.

Next, members discussed the impact of charter schools on the demand for public school capital outlay. Mr. Gorrell noted that charter schools have caused an increase in the demand for funds.

There was a discussion of a proposed senate joint memorial to study the impact of diverting money from the STPF. Some members expressed concern over the use of a memorial in lieu of actual legislation to achieve the intended study. Members discussed the issue and generally seemed in favor of a bill draft to address the issue. Senators Beffort and Munoz and Representatives Varela, Larrañaga and Saavedra all agreed to cosponsor legislation on the matter.

Before moving to the next agenda item, the committee, upon motion, voted without objection to approve the minutes from the committee's October 27, 2011 meeting.

Update on Education Trust Fund Investment Returns

Robert Watson, chair of the Education Trust Board, gave a presentation on the Education Trust Fund returns. He provided a handout highlighting the programs offered and their performance for the quarter ending September 30, 2011. Mr. Watson reminded the members that in 1997 the board began administering the Internal Revenue Service-approved 529 Plan, an education savings plan. When asked about the work of the board, Mr. Watson told the committee that the board has never had difficulty meeting a quorum and does everything necessary to provide public notice of its meetings. When questioned about the rating of the New

Mexico 529 Plan as an "F", Mr. Watson said he disagreed with the rating and he would rate the plan a "C+".

Mr. Watson noted that the board is in the process of hiring a new executive director and is also seeking his replacement as chair. He further said that the majority of the plans' assets are not held by New Mexico residents.

When asked about lawsuits related to the plan, Mr. Watson said that the Oppenheimer fund was over-leveraged. He said that the New Mexico 529 Plan got a good settlement and account holders would be receiving their payments as a result of the settlement shortly. When asked about other potential lawsuits, Mr. Watson said he does not know where the lawsuits are going. He added that he is suggesting that the board issue requests for proposals for at least five different account managers to manage the accounts.

Legislation Affecting the Educational Retirement Board (ERB) Proposed for Endorsement by the IPOC

Jan Goodwin, executive director, and MaryLou Cameron, chair, ERB, addressed the members regarding proposed legislation for the ERB. Ms. Goodwin began by telling members that the ERB had held several public meetings as part of its "Listening Tour" throughout the state. The meetings were intended to solicit public input regarding potential changes to the ERB statute affecting benefits and retirement qualifications.

Ms. Goodwin provided both a bill draft and an outlined proposal for changes recommended by the ERB. She explained that highlights of the proposed changes include a minimum retirement age of 55 years and a reduction in the cost-of-living adjustment (COLA) for all current, future and retired members. Additionally, the proposed changes would include a 10-year grandfathering provision providing a "safe harbor" for members set to meet retirement criteria within 10 years of the date the changes would become effective.

Members asked questions regarding the proposed changes and seemed concerned that the plan selected by the ERB was not one of the plans put forward to the public during the Listening Tour. Rather, the selected plan changes were offered to the ERB in late November 2011 by the New Mexico Association of Educational Retirees. Upon further questioning about the issue, Ms. Goodwin said that the provisions of the plan that were accepted by the ERB are consistent with the ERB membership input and other public input received by the ERB during the Listening Tour.

While all of the ERB's proposed retirement plan changes were not included in the bill draft before the committee, the ERB provided a detailed outline with the proposed changes, and the committee agreed to hear, review and vote on the proposal.

Legislation Affecting the SIC Proposed for the IPOC Endorsement

Senator Keller, Mr. Moise and Mr. Wollman presented legislative proposals for the committee's consideration. Among the proposals presented by the SIC was a bill to increase the

SIC's ability to invest in international equities. After discussion and questions from members, the committee endorsed several of the proposals, including:

- A bill to increase from 1% to 2% of the STPF allocation to the Small Business Investment Corporation (SBIC) and requiring that money allocated to the SBIC from the STPF that is not committed within three years of the allocation be returned to the STPF.
- A bill to change the membership of the SIC by replacing the elected officials with members appointed by those elected officials; removing the chief financial officer of a state institution of higher education; replacing the four members appointed by the New Mexico Legislative Council with one member each appointed by the president pro tempore of the senate, the minority floor leader of the senate, the speaker of the house of representatives and the minority floor leader of the house of representatives, all appointed with the advice and consent of the senate; and increasing from two to four the public members appointed by the governor, with the requirement that no more than two of the four be from the same political party. The bill also provides that the chair and the vice chair of the SIC be elected and changes the powers and duties of the SIC, the state investment officer and staff. Certain reporting deadlines are also changed by the bill.
- A joint resolution to amend Article 12, Section 7 of the Constitution of New Mexico to increase the standard of care exercised by the state investment officer in investing the Land Grant Permanent Funds and removing the constitutional limitation on investment of the funds in international securities, allowing that limitation to be set in statute by the legislature.
- A bill to impose a limit of 25% on the portion of the book value of the Land Grant Permanent Funds that may be invested in international equities at any single time. The bill would become effective upon the certification of the constitutional amendment discussed in the previous item, which would remove the constitutional limitation on international investing.

Legislation Affecting the ERB and the Public Employees Retirement Association (PERA)

Committee members held additional discussion regarding the ERB's proposed retirement plan changes and heard the final legislative proposals that would impact the PERA. Senator Munoz and Representative Stewart discussed possible legislative initiatives to enhance the solvency of the PERA. They were joined in the discussion by a panel of experts that included Kurt Weber, interim executive director, PERA, Daniel Ivey-Soto, executive director, New Mexico Clerks, LLC, Carter Bundy, legislative director, American Federation of State, County and Municipal Employees of New Mexico, Diego Arencon, president of Local 244, International Association of Firefighters, and Oscar Arevalo, fiscal services director from the Administrative Office of the Courts. A number of legislative drafts were reviewed and analyzed by the committee members. Some proposals were put forward for committee endorsement. Among them, the committee endorsed the following:

- A bill to amend the Judicial Retirement Act to provide that employer contributions to the judicial and magistrate retirement funds will come from the general fund and that the portion of civil docket and jury fees that have previously been deposited in the Judicial Retirement Fund be deposited instead in the general fund. This bill would also increase contributions to the Judicial Retirement Fund.
- A bill to allow retired PERA members to return to work temporarily as a precinct board members for a municipal election or an election covered by the Election Code without suspending their pension benefits.
- A memorial requesting the creation of a task force to evaluate the solvency of the municipal and state public safety members' retirement plans and to assess options and make recommendations to the IPOC no later than October 1, 2012 for changes in those plans in order to ensure their long-term solvency.
- A memorial requesting the PERA to assess options, recommend changes to its retirement plans to reduce unfunded retirement benefit liabilities, with a goal of bringing the ratio of fund assets to liabilities to 100% by 2041, and report the recommended changes to the appropriate interim committee by October 1, 2012.
- A bill to amend the Educational Retirement Act to establish a minimum retirement age of 55 for members retiring on or after July 1, 2022, to reduce the annual COLA for retirement annuity payments by 12.5% for existing and future retirees and to change member and employer contribution rates.

Other Legislation Proposed for the IPOC's Endorsement

The committee was provided with proposed legislation that would impact the State Treasurer's Office. Mark Valdes, deputy state treasurer, and Victor Vigil, deputy cash manager, State Treasurer's Office, described their proposed legislation to more clearly define the duties and responsibilities of the state treasurer with regard to receipt, payment and custody of state funds.

After a brief discussion, the committee voted to endorse a bill to clarify the duties and responsibilities of the state treasurer regarding the deposit and accounting of public money.

Having no further business, the committee adjourned at 4:55 p.m.

**LEGISLATION ENDORSED BY THE
COMMITTEE**

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BILL

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO JUDICIAL RETIREMENT; PROVIDING THAT CERTAIN AMOUNTS OF THE CIVIL DOCKET AND JURY FEES BE DEPOSITED INTO THE GENERAL FUND; PROVIDING THAT CONTRIBUTIONS TO JUDICIAL AND MAGISTRATE RETIREMENT BE PROVIDED FROM THE GENERAL FUND; INCREASING CONTRIBUTIONS TO THE JUDICIAL AND MAGISTRATE RETIREMENT FUNDS; MAKING AN APPROPRIATION.

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

SECTION 1. Section 10-12B-3 NMSA 1978 (being Laws 1992, Chapter 111, Section 3, as amended) is amended to read:

"10-12B-3. JUDICIAL RETIREMENT FUND ESTABLISHED--
ADMINISTRATION OF FUND--ACCOUNTING FUNDS.--

A. There is established in the state treasury the "judicial retirement fund". The fund is ~~[comprised]~~ composed of money received from ~~[docket and jury fees of metropolitan~~

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1 ~~courts, district courts, the court of appeals and the supreme~~
2 ~~court]~~ employer and employee contributions and any investment
3 earnings on ~~[fees and]~~ contributions. The board is the trustee
4 of the fund and shall administer and invest the fund.

5 Investment of the fund shall be conducted pursuant to the
6 provisions of the Public Employees Retirement Act. The
7 provisions of the Judicial Retirement Act shall be administered
8 by the board. The board is authorized to promulgate rules.
9 Expenses related to the investment of the fund and
10 administration of the Judicial Retirement Act shall be paid
11 from the fund.

12 B. For purposes of this section, the accounting
13 funds shall be known as the "member contribution fund",
14 "employer's accumulation fund", "retirement reserve fund" and
15 "income fund". The maintenance of separate accounting funds
16 shall not require the actual segregation of the assets of the
17 fund.

18 C. The accounting funds provided for in this
19 section are trust funds and shall be used only for the purposes
20 provided for in the Judicial Retirement Act.

21 D. The member contribution fund is the accounting
22 fund in which shall be accumulated contributions of members and
23 from which shall be made refunds and transfers of accumulated
24 member contributions as provided in the Judicial Retirement
25 Act. The member's court shall cause member contributions to be

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1 deducted from the salary of the member and shall remit the
2 deducted member contributions to the association in accordance
3 with procedures and schedules established by the association.
4 The association may assess an interest charge and a penalty
5 charge on any late remittance. Each member shall be deemed to
6 consent and agree to the deductions made and provided for in
7 this section. Contributions by members shall be credited to
8 the members' individual accounts in the member contribution
9 fund. A member's accumulated member contributions shall be
10 transferred to the retirement reserve fund when a pension
11 becomes payable.

12 E. The employer's accumulation fund is the
13 accounting fund in which shall be accumulated the contributions
14 paid by the state through the member's court. The state,
15 through the member's court, shall remit its contributions to
16 the association in accordance with procedures and schedules
17 established by the association. The board may assess an
18 interest charge and a penalty charge on any late remittance.

19 F. The retirement reserve fund is the accounting
20 fund from which shall be paid all pensions to retired members
21 and survivor beneficiaries and all residual refunds to refund
22 beneficiaries of retired members and survivor beneficiaries.

23 G. Each year, following receipt of the report of
24 the annual actuarial valuation, the excess, if any, of the
25 reported actuarial present value of pensions being paid and

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1 likely to be paid to retired members and survivor beneficiaries
2 and residual refunds likely to be paid to refund beneficiaries
3 of retired members and survivor beneficiaries over the balance
4 in the retirement reserve fund shall be transferred to the
5 retirement reserve fund from the employer's accumulation fund.

6 H. The income fund is the accounting fund to which
7 shall be credited all interest, dividends, rents and other
8 income from investments of the fund, all gifts and bequests,
9 all unclaimed member contributions and all other money the
10 disposition of which is not specifically provided for in the
11 Judicial Retirement Act. Expenses related to the
12 administration of the Judicial Retirement Act shall be paid for
13 from the income fund.

14 I. The association shall at least annually
15 distribute all or a portion of the balance in the income fund
16 to the member contribution fund, the retirement reserve fund
17 and the employer's accumulation fund. Distribution rates shall
18 be determined by the board and may vary for the respective
19 accounting funds."

20 SECTION 2. Section 10-12B-11 NMSA 1978 (being Laws 1992,
21 Chapter 111, Section 11, as amended) is amended to read:

22 "10-12B-11. EMPLOYER CONTRIBUTIONS.--~~[A.]~~ The member's
23 court shall contribute the following amounts to the fund:

24 [~~(1)~~] A. prior to July 1, 2005, nine percent of
25 salary for each member in office;

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1 ~~[(2)]~~ B. from July 1, 2005 through June 30, 2006,
2 ten and one-half percent of salary for each member in office;
3 ~~[and~~

4 ~~(3) on and after]~~ C. from July 1, 2006 through June
5 30, 2012, twelve percent of salary for each member in office,
6 except that for members whose annual salary is greater than
7 twenty thousand dollars (\$20,000):

8 ~~[(a)]~~ (1) from July 1, 2009 through June 30,
9 2011, the member's court contribution rate shall be ten and
10 one-half percent of salary for each member in office; and

11 ~~[(b)]~~ (2) from July 1, 2011 through June 30,
12 2012, the member's court contribution rate shall be eight and
13 three-fourths percent of salary for each member in office; ~~[and~~

14 ~~(c) from July 1, 2012 through June 30,~~
15 ~~2013, the member's court contribution rate shall be ten and~~
16 ~~one-half percent of salary for each member in office.~~

17 ~~B. Thirty-eight dollars (\$38.00) from each civil~~
18 ~~case docket fee paid in the district court, twenty-five dollars~~
19 ~~(\$25.00) from each civil docket fee paid in metropolitan court~~
20 ~~and ten dollars (\$10.00) from each jury fee paid in~~
21 ~~metropolitan court shall be paid by the court clerk to the~~
22 ~~employer's accumulation fund]~~

23 D. from July 1, 2012 through June 30, 2013, thirty
24 and forty-nine hundredths percent of salary for each member in
25 office; except that for members whose annual salary is greater

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1 than twenty thousand dollars (\$20,000):

2 (1) the member's court contribution rate shall
3 be twenty-eight and ninety-nine hundredths percent of salary;
4 or

5 (2) the member's court contribution rate shall
6 be twenty-seven and twenty-four hundredths percent of salary
7 if:

8 (a) after the last consensus revenue
9 forecast before the beginning of the second session of the
10 fiftieth legislature, the secretary of finance and
11 administration certifies to the board, the educational
12 retirement board and the legislative finance committee that,
13 according to the consensus revenue forecast, general fund
14 revenues in fiscal year 2012 will be less than one hundred
15 million dollars (\$100,000,000) more than the general fund
16 revenue forecast reflected in the fiscal year 2012 state
17 budget; and

18 (b) at the end of fiscal year 2012, the
19 total amount in the state reserve funds will be less than five
20 percent of the total general fund appropriations for fiscal
21 year 2012; and

22 E. on and after July 1, 2013, thirty and forty-nine
23 hundredths percent of salary for each member in office."

24 SECTION 3. Section 10-12C-11 NMSA 1978 (being Laws 1992,
25 Chapter 118, Section 11, as amended) is amended to read:

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1 "10-12C-11. EMPLOYER CONTRIBUTIONS.--~~[A.]~~ The state,
2 through the administrative office of the courts, shall
3 contribute the following amounts to the fund:

4 ~~[(1)]~~ A. through June 30, 2006, ten percent of
5 salary for each member in office; ~~[and~~

6 ~~(2) on and after]~~ B. from July 1, 2006 through June
7 30, 2012, eleven percent of salary for each member in office,
8 except that for members whose annual salary is greater than
9 twenty thousand dollars (\$20,000):

10 ~~[(a)]~~ (1) from July 1, 2009 through June 30,
11 2011, the state contribution rate shall be nine and one-half
12 percent of salary for each member in office; and

13 ~~[(b)]~~ (2) from July 1, 2011 through June 30,
14 2012, the state contribution rate shall be seven and three-
15 fourths percent of salary for each member in office; ~~[and~~

16 ~~(c) from July 1, 2012 through June 30,~~
17 ~~2013, the state contribution rate shall be nine and one-half~~
18 ~~percent of salary for each member in office.~~

19 ~~B. Twenty-five dollars (\$25.00) from each civil~~
20 ~~case docket fee paid in magistrate court and ten dollars~~
21 ~~(\$10.00) from each civil jury fee paid in magistrate court~~
22 ~~shall be paid by the court clerk to the employer's accumulation~~
23 ~~fund]~~

24 C. from July 1, 2012 through June 30, 2013, twenty-
25 five and ninety-six hundredths percent of salary for each

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1 member in office; except that for members whose annual salary
2 is greater than twenty thousand dollars (\$20,000):

3 (1) the member's court contribution rate shall
4 be twenty-four and forty-six hundredths percent of salary; or

5 (2) the member's court contribution rate shall
6 be twenty-two and seventy-one hundredths percent of salary if:

7 (a) after the last consensus revenue
8 forecast before the beginning of the second session of the
9 fiftieth legislature, the secretary of finance and
10 administration certifies to the board, the educational
11 retirement board and the legislative finance committee that,
12 according to the consensus revenue forecast, general fund
13 revenues in fiscal year 2012 will be less than one hundred
14 million dollars (\$100,000,000) more than the general fund
15 revenue forecast reflected in the fiscal year 2012 state
16 budget; and

17 (b) at the end of fiscal year 2012, the
18 total amount in the state reserve funds will be less than five
19 percent of the total general fund appropriations for fiscal
20 year 2012; and

21 D. on and after July 1, 2013, twenty-five and
22 ninety-six hundredths percent of salary for each member in
23 office."

24 SECTION 4. Section 35-6-1 NMSA 1978 (being Laws 1968,
25 Chapter 62, Section 92, as amended) is amended to read:

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1 "35-6-1. MAGISTRATE COSTS--SCHEDULE--DEFINITION OF
2 "CONVICTED".--

3 A. Magistrate judges, including metropolitan court
4 judges, shall assess and collect and shall not waive, defer or
5 suspend the following costs:

6 docket fee, criminal actions under Section 29-5-1 NMSA
7 1978 \$ 1.00;

8 docket fee, to be collected prior to docketing any other
9 criminal action, except as provided in Subsection B
10 of Section 35-6-3 NMSA 1978 20.00.

11 Proceeds from this docket fee shall be transferred
12 to the administrative office of the courts for
13 deposit in the court facilities fund;

14 docket fee, twenty dollars (\$20.00) of which shall be
15 deposited in the court automation fund ~~and~~,
16 fifteen dollars (\$15.00) of which shall be deposited
17 in the civil legal services fund and twenty-five
18 dollars (\$25.00) of which shall be deposited in the
19 general fund, to be collected prior to docketing any
20 civil action, except as provided in Subsection A of
21 Section 35-6-3 NMSA 1978 72.00;

22 jury fee, ten dollars (\$10.00) of which shall be deposited
23 in the general fund, to be collected from the party
24 demanding trial by jury in any civil action at the
25 time the demand is filed or made 25.00;

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1 copying fee, for making and certifying copies of any
2 records in the court, for each page copied by
3 photographic process 0.50.

4 Proceeds from this copying fee shall be transferred
5 to the administrative office of the courts for
6 deposit in the court facilities fund; and

7 copying fee, for computer-generated or electronically
8 transferred copies, per page 1.00.

9 Proceeds from this copying fee shall be transferred
10 to the administrative office of the courts for
11 deposit in the court automation fund.

12 Except as otherwise specifically provided by law, docket
13 fees shall be paid into the court facilities fund.

14 B. Except as otherwise provided by law, no other
15 costs or fees shall be charged or collected in the magistrate
16 or metropolitan court.

17 C. The magistrate or metropolitan court may grant
18 free process to any party in any civil proceeding or special
19 statutory proceeding upon a proper showing of indigency. The
20 magistrate or metropolitan court may deny free process if it
21 finds that the complaint on its face does not state a cause of
22 action.

23 D. As used in this subsection, "convicted" means the
24 defendant has been found guilty of a criminal charge by the
25 magistrate or metropolitan judge, either after trial, a plea of

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1 guilty or a plea of nolo contendere. Magistrate judges,
2 including metropolitan court judges, shall assess and collect
3 and shall not waive, defer or suspend the following costs:

4 (1) corrections fee, to be collected upon
5 conviction from persons convicted of violating any provision of
6 the Motor Vehicle Code involving the operation of a motor
7 vehicle, convicted of a crime constituting a misdemeanor or a
8 petty misdemeanor or convicted of violating any ordinance that
9 may be enforced by the imposition of a term of imprisonment as
10 follows:

11 in a county with a metropolitan court \$10.00;
12 in a county without a metropolitan court 20.00;

13 (2) court automation fee, to be collected upon
14 conviction from persons convicted of violating any provision of
15 the Motor Vehicle Code involving the operation of a motor
16 vehicle, convicted of a crime constituting a misdemeanor or a
17 petty misdemeanor or convicted of violating any ordinance that
18 may be enforced by the imposition of a term of
19 imprisonment 10.00;

20 (3) traffic safety fee, to be collected upon
21 conviction from persons convicted of violating any provision of
22 the Motor Vehicle Code involving the operation of a motor
23 vehicle 3.00;

24 (4) judicial education fee, to be collected upon
25 conviction from persons convicted of operating a motor vehicle

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1 in violation of the Motor Vehicle Code, convicted of a crime
2 constituting a misdemeanor or a petty misdemeanor or convicted
3 of violating any ordinance punishable by a term of
4 imprisonment 3.00;

5 (5) jury and witness fee, to be collected upon
6 conviction from persons convicted of operating a motor vehicle
7 in violation of the Motor Vehicle Code, convicted of a crime
8 constituting a misdemeanor or a petty misdemeanor or convicted
9 of violating any ordinance punishable by a term of
10 imprisonment 5.00;

11 (6) brain injury services fee, to be collected
12 upon conviction from persons convicted of violating any
13 provision of the Motor Vehicle Code involving the operation of
14 a motor vehicle 5.00;

15 and

16 (7) court facilities fee, to be collected upon
17 conviction from persons convicted of violating any provision of
18 the Motor Vehicle Code involving the operation of a motor
19 vehicle, convicted of a crime constituting a misdemeanor or a
20 petty misdemeanor or convicted of violating any ordinance that
21 may be enforced by the imposition of a term of imprisonment as
22 follows:

23 in a county with a metropolitan court 24.00;
24 in any other county 10.00.

25 E. Metropolitan court judges shall assess and collect

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1 and shall not waive, defer or suspend as costs a mediation fee
2 not to exceed five dollars (\$5.00) for the docketing of small
3 claims and criminal actions specified by metropolitan court
4 rule. Proceeds of the mediation fee shall be deposited into
5 the metropolitan court mediation fund.

6 SECTION 5. APPROPRIATION.--Three million fifty-one
7 thousand dollars (\$3,051,000) is appropriated from the general
8 fund to the department of finance and administration for
9 expenditure in fiscal year 2013 for distribution to the supreme
10 court, court of appeals, district courts, Bernalillo county
11 metropolitan court and the administrative office of the courts
12 to pay the increased employer contributions. Any unexpended or
13 unencumbered balance remaining at the end of fiscal year 2013
14 shall not revert to the general fund.

15 SECTION 6. EFFECTIVE DATE.--The effective date of the
16 provisions of this act is July 1, 2012.

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HOUSE BILL

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO PRECINCT BOARD MEMBERS; ALLOWING SEASONAL EMPLOYEES
TO WORK TEMPORARILY AS PRECINCT BOARD MEMBERS WITHOUT
SUSPENDING THEIR PENSION BENEFITS; DECLARING AN EMERGENCY.

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

SECTION 1. Section 1-2-16 NMSA 1978 (being Laws 1969,
Chapter 240, Section 36, as amended) is amended to read:

"1-2-16. PRECINCT BOARD--COMPENSATION.--

A. Members of a precinct board shall be compensated
for their services at the rate of not less than the federal
minimum hourly wage rate nor more than two hundred dollars
(\$200) for an election day.

B. Members of a precinct board assigned to alternate
voting locations or absent voter precincts may be compensated
at an hourly rate set by the county clerk.

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1 C. Compensation shall be paid within thirty days
2 following the date of election.

3 D. For purposes of determining eligibility for
4 membership in the public employees retirement association and
5 pursuant to the provisions of Subsection B of Section 10-11-3
6 NMSA 1978, precinct board members are designated as seasonal
7 employees."

8 SECTION 2. Section 10-11-8 NMSA 1978 (being Laws 1987,
9 Chapter 253, Section 8, as amended) is amended to read:

10 "10-11-8. NORMAL RETIREMENT--RETURN TO EMPLOYMENT--
11 BENEFITS CONTINUED--EMPLOYER CONTRIBUTIONS.--

12 A. A member may retire upon fulfilling the following
13 requirements prior to the selected date of retirement:

14 (1) a written application for normal retirement,
15 in the form prescribed by the association, is filed with the
16 association;

17 (2) employment is terminated with all employers
18 covered by any state system or the educational retirement
19 system;

20 (3) the member selects an effective date of
21 retirement that is the first day of a calendar month; and

22 (4) the member meets the age and service credit
23 requirement for normal retirement specified in the coverage
24 plan applicable to the member.

25 B. The amount of normal retirement pension is

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1 determined in accordance with the coverage plan applicable to
2 the member.

3 C. Except as provided in Subsection D of this
4 section, on or after July 1, 2010, a retired member may be
5 subsequently employed by an affiliated public employer only
6 pursuant to the following provisions:

7 (1) the retired member has not been employed as
8 an employee of an affiliated public employer or retained as an
9 independent contractor by the affiliated public employer from
10 which the retired member retired for at least twelve
11 consecutive months from the date of retirement to the
12 commencement of employment or reemployment with an affiliated
13 public employer;

14 (2) the retired member's pension shall be
15 suspended upon commencement of the employment;

16 (3) except as provided in Subsection F of this
17 section, the previously retired member shall not become a
18 member and thus the previously retired member shall accrue no
19 service credit and the previously retired member and that
20 person's affiliated public employer shall make no contributions
21 under any coverage plan pursuant to the Public Employees
22 Retirement Act; and

23 (4) upon termination of the subsequent
24 employment, the previously retired member's pension shall
25 resume in accordance with the provisions of Subsection A of

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1 this section.

2 D. The provisions of Subsection C of this section do
3 not apply to:

4 (1) a retired member employed by the legislature
5 for legislative session work; [~~or~~]

6 (2) a retired member employed temporarily as a
7 precinct board member for a municipal election or an election
8 covered by the Election Code; or

9 [~~(2)~~] (3) a retired member who is elected to
10 serve a term as an elected official; provided that:

11 (a) the retired member files an irrevocable
12 exemption from membership with the association within thirty
13 days of taking office; and

14 (b) the irrevocable exemption shall be for
15 the elected official's term of office.

16 E. A retired member who returns to employment during
17 retirement pursuant to Subsection D of this section is entitled
18 to receive retirement benefits but is not entitled to accrue
19 service credit or to acquire or purchase service credit in the
20 future for the period of the previously retired member's
21 reemployment with an affiliated public employer.

22 F. At any time during a previously retired member's
23 subsequent employment pursuant to Subsection C of this section,
24 the previously retired member may elect to become a member and
25 the following conditions shall apply:

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1 (1) the previously retired member and the
2 subsequent affiliated public employer shall make the required
3 employee and employer contributions, and the previously retired
4 member shall accrue service credit for the period of subsequent
5 employment; and

6 (2) when the previously retired member
7 terminates the subsequent employment with an affiliated public
8 employer, the previously retired member shall retire according
9 to the provisions of the Public Employees Retirement Act,
10 subject to the following conditions:

11 (a) payment of the pension shall resume in
12 accordance with the provisions of Subsection A of this section;

13 (b) unless the previously retired member
14 accrued at least three years of service credit on account of
15 the subsequent employment, the recalculation of pension shall:
16 1) employ the form of payment selected by the previously
17 retired member at the time of the first retirement; and 2) use
18 the provisions of the coverage plan applicable to the member on
19 the date of the first retirement; and

20 (c) the recalculated pension shall not be
21 less than the amount of the suspended pension.

22 G. A previously retired member who returned to work
23 with an affiliated public employer prior to July 1, 2010 shall
24 be subject to the provisions of this section in effect on the
25 date the previously retired member returned to work; provided

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1 that, on and after July 1, 2010, the previously retired member
2 shall pay the employee contribution in an amount specified in
3 the Public Employees Retirement Act for the position in which
4 the previously retired member is employed.

5 H. The pension of a member who has three or more
6 years of service credit under each of two or more coverage
7 plans shall be determined in accordance with the coverage plan
8 that produces the highest pension. The pension of a member who
9 has service credit under two or more coverage plans but who has
10 three or more years of service credit under only one of those
11 coverage plans shall be determined in accordance with the
12 coverage plan in which the member has three or more years of
13 service credit. If the service credit is acquired under two
14 different coverage plans applied to the same affiliated public
15 employer as a consequence of an election by the members,
16 adoption by the affiliated public employer or a change in the
17 law that results in the application of a coverage plan with a
18 greater pension, the greater pension shall be paid a member
19 retiring from the affiliated public employer under which the
20 change in coverage plan took place regardless of the amount of
21 service credit under the coverage plan producing the greater
22 pension; provided the member has three or more years of
23 continuous employment with that affiliated public employer
24 immediately preceding or immediately preceding and immediately
25 following the date the coverage plan changed. The provisions

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1 of each coverage plan for the purpose of this subsection shall
2 be those in effect at the time the member ceased to be covered
3 by the coverage plan. "Service credit", for the purposes of
4 this subsection, shall be only personal service rendered an
5 affiliated public employer and credited to the member under the
6 provisions of Subsection A of Section 10-11-4 NMSA 1978.
7 Service credited under any other provision of the Public
8 Employees Retirement Act shall not be used to satisfy the
9 three-year service credit requirement of this subsection."

10 SECTION 3. EMERGENCY.--It is necessary for the public
11 peace, health and safety that this act take effect immediately.

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SENATE MEMORIAL

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

DISCUSSION DRAFT

A MEMORIAL

REQUESTING THE CREATION OF A TASK FORCE TO EVALUATE THE MUNICIPAL AND STATE PUBLIC SAFETY MEMBERS RETIREMENT PLANS AND TO ASSESS OPTIONS AND MAKE RECOMMENDATIONS FOR CHANGES TO THOSE PLANS TO HELP ENSURE THEIR SOLVENCY.

WHEREAS, the public employees retirement association has an unfunded liability of five billion dollars (\$5,000,000,000), and approximately one billion dollars (\$1,000,000,000) of this unfunded liability is attributable to the municipal police and fire member retirement plans; and

WHEREAS, the retiree health care fund has an unfunded liability in excess of three billion dollars (\$3,000,000,000), which is due in part to the expense of providing subsidized health care coverage for an extended period of time for relatively young retirees; and

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1 WHEREAS, the new governmental accounting standards board
2 financial reporting standards will place these unfunded
3 liabilities directly alongside the state's long-term bonded
4 indebtedness and at the front of New Mexico's financial
5 statements; and

6 WHEREAS, New Mexico's bond ratings could be negatively
7 affected by the enhanced reporting of the huge unfunded
8 liabilities; and

9 WHEREAS, attempts to cover the public employees retirement
10 association's unfunded liability from increased contributions
11 alone will be difficult, if not impossible, since the total of
12 combined employer and employee contributions required to ensure
13 the solvency of the fund is forty-eight percent of pay for
14 municipal police and sixty percent of pay for municipal fire
15 members; and

16 WHEREAS, many local governments that are facing budgetary
17 constraints currently pay seventy-five percent of their
18 employees' contributions; and

19 WHEREAS, reasonable solutions to address the unfunded
20 liability of these retirement plans need to consider any unique
21 health and safety aspects associated with the police,
22 firefighters and other uniformed occupations; and

23 WHEREAS, reasonable solutions also need to recognize the
24 needs and concerns of state and local governments' abilities to
25 recruit and retain qualified police and fire department

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1 personnel;

2 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE
3 OF NEW MEXICO that the New Mexico legislative council be
4 requested to create the public safety pensions task force to
5 evaluate the existing retirement plans for all municipal and
6 state public safety members of the public employees retirement
7 association and to assess the options and make recommendations
8 for changes to those plans that will help ensure their
9 continued solvency; and

10 BE IT FURTHER RESOLVED that the task force provide its
11 recommendations and their impact on the solvency of the plans
12 to the interim investments and pensions oversight committee no
13 later than October 1, 2012; and

14 BE IT FURTHER RESOLVED that the public employees
15 retirement association be requested to provide any necessary
16 valuations and actuarial impacts of task force proposals as
17 requested by the task force or the investments and pensions
18 oversight committee on the public employees retirement
19 association's actuarial valuation as of June 30, 2011; and

20 BE IT FURTHER RESOLVED that the task force identify any
21 unique health and safety aspects associated with police,
22 firefighters and other uniformed occupations based on existing
23 studies by recognized experts; and

24 BE IT FURTHER RESOLVED that the task force be composed of
25 the following nine members:

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1 A. one representative appointed by the international
2 association of firefighters;

3 B. one representative appointed by the New Mexico
4 fraternal order of police;

5 C. one representative appointed by the New Mexico
6 state police;

7 D. the chair of the public employees retirement
8 association board;

9 E. the executive director of the New Mexico municipal
10 league;

11 F. two members of the house of representatives, one
12 from the majority and one from a minority party appointed by
13 the speaker of the house of representatives; and

14 G. two members of the senate, one from the majority
15 and one from a minority party appointed by the senate majority
16 floor leader; and

17 BE IT FURTHER RESOLVED that copies of this memorial be
18 transmitted to the chair and vice chair of the investments and
19 pensions oversight committee, a representative of the
20 international association of firefighters, the president of the
21 New Mexico fraternal order of police, the secretary of the New
22 Mexico state police, the chair of the public employees
23 retirement association board, the executive director of the New
24 Mexico municipal league, the speaker of the house of
25 representatives and the president pro tempore of the senate.

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_____ MEMORIAL

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

DISCUSSION DRAFT

A MEMORIAL

REQUESTING THE PUBLIC EMPLOYEES RETIREMENT ASSOCIATION TO
ASSESS OPTIONS FOR CHANGES TO PUBLIC EMPLOYEES RETIREMENT PLANS
TO REDUCE UNFUNDED ACCRUED ACTUARIAL LIABILITY WITH A GOAL TO
BRING THE FUNDING STATUS TO ONE HUNDRED PERCENT BY 2041 AND
REPORT RECOMMENDATIONS BY OCTOBER 2012.

WHEREAS, the basic financial objective of the public
employees retirement association is to ensure that statutory
employee and employer contributions, when combined with present
assets and future investment returns, will be sufficient to
meet the association's present and future financial
obligations; and

WHEREAS, past benefit plan enhancements have created
additional liabilities for the association and have affected
the funding status of certain retirement coverage plans; and

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1 WHEREAS, events in financial markets have resulted in
2 significant reduction in plan assets to all public pension
3 funds, including the retirement funds administered by the
4 public employees retirement association; and

5 WHEREAS, the public employees retirement fund has an
6 unfunded liability totaling four billion nine hundred million
7 dollars (\$4,900,000,000); and

8 WHEREAS, attempts to cover the public employees retirement
9 fund's unfunded accrued liability and to sustain existing
10 benefit levels for current members through statutory
11 contribution rates increases alone is impossible; and

12 WHEREAS, the public employees retirement association's
13 actuaries are performing an open group actuarial study to be
14 completed by January 2012 that will provide more definitive
15 baseline data regarding the current benefit structures to
16 determine the long-term actuarial condition of the retirement
17 plans; and

18 WHEREAS, the results of the open group projections will
19 provide the public employees retirement association board with
20 the baseline required to assess plan design changes required
21 for future and current members of the retirement plans,
22 including retirees; and

23 WHEREAS, the public employees retirement association
24 board is conducting an asset liability study to further
25 determine how future investment return assumptions will affect

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1 the long-term actuarial condition of the retirement plans and
2 will be completed in February 2012; and

3 WHEREAS, the results of these studies will be communicated
4 to current active and retired members, and stakeholder input
5 will be considered as plan design changes are developed; and

6 WHEREAS, the public employees retirement association board
7 seeks to ensure consistency within all retirement plans by
8 focusing on a minimum retirement age in relation to statutory
9 contributions and final retirement pension; and

10 WHEREAS, reasonable solutions to address the unfunded
11 accrued liability of the retirement plans administered by the
12 public employees retirement association need to be considered
13 through an actuarially sound process; and

14 WHEREAS, the public employees retirement association board
15 is under a fiduciary duty to ensure that any modification of
16 benefits paid by the retirement systems or changes in the
17 funding formula for a retirement plan be adequately funded in
18 accordance with actuarial standards consistent with Article 20,
19 Section 22 of the constitution of New Mexico;

20 NOW, THEREFORE, BE IT RESOLVED BY THE _____ OF THE
21 STATE OF NEW MEXICO that the public employees retirement
22 association be requested to assess options for changes to
23 public employees retirement plans to reduce unfunded accrued
24 actuarial liability with a goal to bring the funding status to
25 one hundred percent by 2041; and

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BILL

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

DISCUSSION DRAFT

ENDORSED BY THE INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

AN ACT

RELATING TO PENSIONS; AMENDING THE EDUCATIONAL RETIREMENT ACT;
CHANGING THE COST-OF-LIVING ADJUSTMENT; CHANGING AGE AND
SERVICE REQUIREMENTS FOR RETIREMENT OF CERTAIN EMPLOYEES;
CHANGING MEMBER AND EMPLOYER CONTRIBUTION RATES.

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;

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1 (2) from July 1, 2005 through June 30, 2006, an
2 amount equal to seven and six hundred seventy-five thousandths
3 percent of the member's annual salary;

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

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

10 (5) ~~[on and after]~~ from July 1, 2008 through
11 June 30, 2013, an amount equal to seven and nine-tenths percent
12 of the member's annual salary, except that for members whose
13 annual salary is greater than twenty thousand dollars
14 (\$20,000):

15 (a) from July 1, 2009 through June 30, 2011,
16 the member contribution rate shall be nine and four-tenths
17 percent of the member's annual salary;

18 (b) from July 1, 2011 through June 30, 2012,
19 the member contribution rate shall be eleven and fifteen-
20 hundredths percent of the member's annual salary; and

21 (c) from July 1, 2012 through June 30, 2013,
22 the member contribution rate shall be nine and four-tenths of
23 the member's annual salary;

24 (6) from July 1, 2013 through June 30, 2014, for
25 members whose annual salary is greater than twenty thousand

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1 dollars (\$20,000), an amount equal to nine and five-tenths
2 percent of the member's annual salary, and for members whose
3 annual salary is equal to or less than twenty thousand dollars
4 (\$20,000), an amount equal to eight and three-tenths percent of
5 the member's annual salary;

6 _____ (7) from July 1, 2014 through June 30, 2015, for
7 members whose annual salary is greater than twenty thousand
8 dollars (\$20,000), an amount equal to nine and six-tenths
9 percent of the member's annual salary, and for members whose
10 annual salary is equal to or less than twenty thousand dollars
11 (\$20,000), an amount equal to eight and seven-tenths percent of
12 the member's annual salary;

13 _____ (8) from July 1, 2015 through June 30, 2016, for
14 members whose annual salary is greater than twenty thousand
15 dollars (\$20,000), an amount equal to nine and seven-tenths
16 percent of the member's annual salary, and for members whose
17 annual salary is equal to or less than twenty thousand dollars
18 (\$20,000), an amount equal to nine and one-tenth percent of the
19 member's annual salary;

20 _____ (9) from July 1, 2016 through June 30, 2017, for
21 members whose annual salary is greater than twenty thousand
22 dollars (\$20,000), an amount equal to nine and eight-tenths
23 percent of the member's annual salary, and for members whose
24 annual salary is equal to or less than twenty thousand dollars
25 (\$20,000), an amount equal to nine and five-tenths percent of

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1 unit;

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

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

13 (7) from July 1, 2011 through June 30, 2012, a
14 sum equal to nine and fifteen-hundredths percent of the annual
15 salary of each member employed by the local administrative
16 unit, except that for members whose annual salary is twenty
17 thousand dollars (\$20,000) or less, the local administrative
18 unit shall contribute twelve and four-tenths percent of the
19 member's annual salary;

20 (8) from July 1, 2012 through June 30, 2013, a
21 sum equal to ten and nine-tenths percent of the annual salary
22 of each member employed by the local administrative unit,
23 except that for members whose annual salary is twenty thousand
24 dollars (\$20,000) or less, the local administrative unit shall
25 contribute twelve and four-tenths percent of the member's

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1 annual salary;

2 (9) from July 1, 2013 through June 30, 2014, a
3 sum equal to [~~thirteen and fifteen hundredths percent of the~~
4 ~~annual salary of each member employed by the local~~
5 ~~administrative unit; and~~

6 ~~(10) on and after July 1, 2014, a sum equal to~~
7 ~~thirteen and nine tenths percent of the annual salary of each~~
8 ~~member employed by the local administrative unit] ten and nine-
9 tenths percent of the annual salary of each member employed by
10 the local administrative unit, except that for members whose
11 annual salary is equal to or less than twenty thousand dollars
12 (\$20,000), the local administrative unit shall contribute
13 twelve and sixty-five hundredths percent of the member's annual
14 salary;~~

15 (10) from July 1, 2014 through June 30, 2015, a
16 sum equal to eleven and five-tenths percent of the annual
17 salary of each member employed by the local administrative
18 unit, except that for members whose annual salary is equal to
19 or less than twenty thousand dollars (\$20,000), the local
20 administrative unit shall contribute twelve and nine-tenths
21 percent of the member's annual salary;

22 (11) from July 1, 2015 through June 30, 2016, a
23 sum equal to twelve and one-tenth percent of the annual salary
24 of each member employed by the local administrative unit,
25 except that for members whose annual salary is equal to or less

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1 than twenty thousand dollars (\$20,000), the local
2 administrative unit shall contribute thirteen and fifteen-
3 hundredths percent of the member's annual salary;

4 _____ (12) from July 1, 2016 through June 30, 2017, a
5 sum equal to twelve and seven-tenths percent of the annual
6 salary of each member employed by the local administrative
7 unit, except that for members whose annual salary is equal to
8 or less than twenty thousand dollars (\$20,000), the local
9 administrative unit shall contribute thirteen and four-tenths
10 percent of the member's annual salary;

11 _____ (13) from July 1, 2017 through June 30, 2018, a
12 sum equal to thirteen and three-tenths percent of the annual
13 salary of each member employed by the local administrative
14 unit, except that for members whose annual salary is equal to
15 or less than twenty thousand dollars (\$20,000), the local
16 administrative unit shall contribute thirteen and sixty-five
17 hundredths percent of the member's annual salary; and _____

18 _____ (14) on and after July 1, 2018, a sum equal to
19 thirteen and nine-tenths percent of the annual salary of each
20 member employed by the local administrative 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, no
2 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 limit
9 shall be divided into four equal portions, and, for purposes of
10 attributing contributory employment and crediting service
11 credit, each portion shall be attributable to one of the four
12 quarters of the calendar year."

13 SECTION 2. Section 22-11-23 NMSA 1978 (being Laws 1981,
14 Chapter 293, Section 2, as amended by Laws 2009, Chapter 286,
15 Section 1 and by Laws 2009, Chapter 288, Section 14) is amended
16 to read:

17 "22-11-23. RETIREMENT ELIGIBILITY--~~[INITIAL]~~ MEMBERSHIP
18 PRIOR TO JULY 1, 2010--SAFE HARBOR--MEMBERSHIP AFTER JUNE 30,
19 2012.--

20 A. On or before June 30, 2022, the retirement
21 benefits eligibility pursuant to the Educational Retirement Act
22 for a member who [~~either~~] was a member on or before June 30,
23 2010, [~~or was a member at any time prior to that date~~] and had
24 not, on or before that date, been refunded all member
25 contributions pursuant to Subsection A of Section 22-11-15 NMSA
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1 1978 ~~[is as follows]~~ or was a member at any time on or before
2 June 30, 2010 and had been refunded any or all member
3 contributions pursuant to that subsection and had restored all
4 of the refunded contributions on or before June 30, 2010 occurs
5 when:

6 ~~[(1) a member shall be eligible for retirement~~
7 ~~benefits pursuant to the Educational Retirement Act when either~~
8 ~~of the following conditions occurs:~~

9 ~~(a)]~~ (1) the member has five or more years of
10 earned service credit and the sum of the member's age and years
11 of earned service credit equals at least seventy-five; ~~or~~

12 ~~(b) upon completion of five years of earned~~
13 ~~service credit and upon becoming sixty-five years of age]~~

14 (2) the member is at least sixty-five years of
15 age and has five or more years of earned service credit; or

16 (3) the member has twenty-five or more years of
17 earned and allowed service credit. A member younger than sixty
18 years of age eligible for retirement pursuant to this paragraph
19 may retire and receive retirement benefits pursuant to the
20 Educational Retirement Act computed on the same basis as if the
21 member were sixty years of age.

22 ~~[(2)]~~ B. A member ~~[under]~~ younger than sixty years of
23 age ~~[eligible to retire under Paragraph (1)]~~ who retires
24 pursuant to the provisions of Paragraph (1) of Subsection A of
25 this ~~[subsection may retire and receive retirement benefits~~

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underscored material = new
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1 ~~pursuant to the Educational Retirement Act that the member~~
2 ~~would be eligible to receive if the member were to retire at~~
3 ~~the age of sixty years reduced by six-tenths of one percent for~~
4 ~~each one-fourth, or portion thereof, year that retirement~~
5 ~~occurs prior to the member's sixtieth birthday but after the~~
6 ~~fifty-fifth birthday, and one and eight-tenths percent for each~~
7 ~~one-fourth, or portion thereof, year that retirement occurs~~
8 ~~prior to age fifty-five; or~~

9 ~~(3) a member under sixty years of age acquiring~~
10 ~~twenty-five or more years of earned and allowed service credit~~
11 ~~may retire and receive retirement benefits pursuant to the~~
12 ~~Educational Retirement Act computed on the same basis as if the~~
13 ~~member were sixty years of age] section shall be subject to the~~
14 ~~benefit reductions provided in Paragraphs (1) and (2) of~~
15 ~~Subsection G of Section 22-11-30 NMSA 1978.~~

16 ~~[B.]~~ C. A member shall be subject to the provisions
17 of Paragraphs [~~+2~~] (1) and (3) of Subsection A of this section
18 as they existed at the beginning of the member's last cumulated
19 four quarters of earned service credit, regardless of later
20 amendment.

21 D. On or after July 1, 2022, the retirement benefits
22 eligibility pursuant to the Educational Retirement Act for a
23 member who was a member on or before June 30, 2010 and had not,
24 on or before that date, been refunded all member contributions
25 pursuant to Subsection A of Section 22-11-15 NMSA 1978 or was a

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underscored material = new
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1 member at any time on or before June 30, 2010 and had been
2 refunded any or all member contributions pursuant to that
3 subsection and had restored all of the refunded contributions
4 on or before June 30, 2010 occurs when:

5 _____ (1) the member is at least fifty-five years of
6 age with five or more years of earned service credit and the
7 sum of the member's age and years of earned service credit
8 equals at least seventy-five;

9 _____ (2) the member is at least sixty-five years of
10 age and has five or more years of earned service credit; or

11 _____ (3) the member is at least fifty-five years of
12 age and has twenty-five or more years of earned and allowed
13 service credit.

14 _____ E. A member who is younger than sixty years of age
15 and who is eligible to retire pursuant to the provisions of
16 Paragraph (1) or (3) of Subsection D of this section shall be
17 subject to the benefit reductions provided in Paragraphs (1)
18 and (2) of Subsection G of Section 22-11-30 NMSA 1978.

19 _____ F. A member shall be subject to the provisions of
20 Paragraphs (1) and (3) of Subsection D of this section as they
21 existed at the beginning of the member's last cumulated four
22 quarters of earned service credit, regardless of later
23 amendments."

24 SECTION 3. Section 22-11-23.1 NMSA 1978 (being Laws 2009,
25 Chapter 286, Section 2 and Laws 2009, Chapter 288, Section 15)

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1 is amended to read:

2 "22-11-23.1. RETIREMENT ELIGIBILITY--~~[INITIAL]~~ MEMBERSHIP
3 ~~[ON OR AFTER]~~ RELATIVE TO JULY 1, 2010.--

4 ~~[A. A member who initially became a member on or~~
5 ~~after July 1, 2010 or a member who was a member at any time~~
6 ~~prior to that date and had, before that date, been refunded all~~
7 ~~member contributions pursuant to Subsection A of Section~~
8 ~~22-11-15 NMSA 1978, shall be eligible for retirement benefits~~
9 ~~pursuant to the Educational Retirement Act when one of the~~
10 ~~following conditions occurs:~~

11 ~~(1) the member is any age and has thirty or more~~
12 ~~years of earned service credit;~~

13 ~~(2) the member is at least sixty-seven years of~~
14 ~~age and has five or more years of earned service credit; or~~

15 ~~(3) the sum of the member's age and years of~~
16 ~~earned service credit equals at least eighty; provided that a~~
17 ~~member who retires pursuant to this paragraph shall be subject~~
18 ~~to the benefit reductions provided in Paragraphs (1) and (2) of~~
19 ~~Subsection H of Section 22-11-30 NMSA 1978.]~~

20 A. On or before June 30, 2022, the retirement
21 eligibility pursuant to the Educational Retirement Act for a
22 member who, on or after July 1, 2010, became a member or was a
23 member at any time on or before July 1, 2010 and had been
24 refunded any or all member contributions pursuant to Subsection
25 A of Section 22-11-15 NMSA 1978 and had not restored all of the

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1 refunded contributions prior to July 1, 2010 occurs when:

2 _____ (1) the member has thirty or more years of
3 earned service credit;

4 _____ (2) the member is at least sixty-seven years of
5 age and has five or more years of earned service credit; or

6 _____ (3) the member has five or more years of earned
7 service credit and the sum of the member's age and earned
8 service credit equals at least eighty; provided that a member
9 who is younger than sixty years of age and who retires pursuant
10 to this paragraph shall be subject to the benefit reductions
11 provided in Paragraphs (1) and (2) of Subsection H of Section
12 22-11-30 NMSA 1978.

13 _____ B. On or after July 1, 2022, the retirement benefits
14 eligibility pursuant to the Educational Retirement Act for a
15 member who, on or after July 1, 2010, became a member or was a
16 member at any time on or before July 1, 2010 and had, before
17 that date, been refunded all member contributions pursuant to
18 Subsection A of Section 22-11-15 NMSA 1978 and had not restored
19 all of the refunded contributions prior to July 1, 2010 occurs
20 when:

21 _____ (1) the member is at least fifty-five years of
22 age and has thirty or more years of earned service credit;

23 _____ (2) the member is at least sixty-seven years of
24 age and has five or more years of earned service credit; or

25 _____ (3) the member is at least fifty-five years of

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1 age with five or more years of earned service credit and the
2 sum of the member's age and earned service credit equals at
3 least eighty.

4 C. A member younger than sixty years of age who is
5 eligible to retire pursuant to the provisions of Paragraph (1)
6 or (3) of Subsection B of this section shall be subject to the
7 benefit reductions provided in Paragraphs (1) and (2) of
8 Subsection H of Section 22-11-30 NMSA 1978.

9 ~~[B.]~~ D. A member shall be subject to the provisions
10 of this section as they existed at the beginning of the
11 member's last cumulated four quarters of earned service credit,
12 regardless of later amendment."

13 **SECTION 4.** Section 22-11-27 NMSA 1978 (being Laws 1967,
14 Chapter 16, Section 150, as amended) is amended to read:

15 "22-11-27. DEFERRED RETIREMENT--RESTRICTION.--

16 A. A member who is eligible for retirement may
17 continue in employment and shall continue to pay contributions
18 as provided by the Educational Retirement Act.

19 ~~[B. A member may terminate his employment and retire~~
20 ~~at any time after his age and his earned service credit equal~~
21 ~~the sum of seventy-five if the contributions he has made are~~
22 ~~left in the fund.~~

23 ~~G. A member having five years or more of earned~~
24 ~~service credit may terminate his employment and retire at any~~
25 ~~time after reaching the age of sixty-five years if the~~

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1 ~~contributions he has made are left in the fund.]~~

2 B. Provided that the contributions that the member
3 has made are left in the fund, a member who is eligible for
4 retirement pursuant to the provisions of Subsection A of
5 Section 22-11-23 NMSA 1978 may terminate employment and retire:

6 (1) after the member has at least five years of
7 earned service credit if the sum of the member's age and earned
8 service credit equals at least seventy-five;

9 (2) after the member has at least five years of
10 earned service credit and is at least sixty-five years of age;
11 or

12 (3) after the member has at least twenty-five
13 years of earned and allowed service credit.

14 C. Provided that the contributions that the member
15 has made are left in the fund, a member who is eligible for
16 retirement pursuant to the provisions of Subsection D of
17 Section 22-11-23 NMSA 1978 may terminate employment and retire:

18 (1) after the member has at least five years of
19 earned service credit and is at least fifty-five years of age
20 if the sum of the member's age and earned service credit equals
21 at least seventy-five;

22 (2) after the member has at least five years of
23 earned service credit and is at least sixty-five years of age;
24 or

25 (3) after the member has at least twenty-five

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1 years of earned and allowed service credit and is at least
2 fifty-five years of age.

3 _____ D. Provided that the contributions that the member
4 has made are left in the fund, a member who is eligible for
5 retirement pursuant to the provisions of Subsection A of
6 Section 22-11-23.1 NMSA 1978 may terminate employment and
7 retire:

8 _____ (1) after the member has at least five years of
9 earned service credit if the sum of the member's age and earned
10 service credit equals at least eighty;

11 _____ (2) after the member has at least five years of
12 earned service credit and is at least sixty-seven years of age;
13 or

14 _____ (3) after the member has at least thirty years
15 of earned service credit.

16 _____ E. Provided that the contributions that the member
17 has made are left in the fund, a member who is eligible for
18 retirement pursuant to the provisions of Subsection B of
19 Section 22-11-23.1 NMSA 1978 may terminate employment and
20 retire:

21 _____ (1) after the member has at least five years of
22 earned service credit and is at least fifty-five years of age
23 if the sum of the member's age and earned service credit equals
24 at least eighty;

25 _____ (2) after the member has at least five years of

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underscoring material = new
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1 earned service credit and is at least sixty-seven years of age;
2 or
3 _____ (3) after the member has at least thirty years
4 of earned service credit and is at least fifty-five years of
5 age.

6 [D-] F. No member shall be on a retirement status
7 while engaged in employment unless the employment falls within
8 exceptions established by statute or rule of the board."

9 SECTION 5. Section 22-11-30 NMSA 1978 (being Laws 1967,
10 Chapter 16, Section 153, as amended by Laws 2009, Chapter 286,
11 Section 3 and by Laws 2009, Chapter 288, Section 17) is amended
12 to read:

13 "22-11-30. RETIREMENT BENEFITS.--

14 A. Retirement benefits for a member retired pursuant
15 to the Educational Retirement Act on or before June 30, 1967
16 shall be paid monthly and shall be one-twelfth of a sum equal
17 to one and one-half percent of the first four thousand dollars
18 (\$4,000) of the member's average annual salary and one percent
19 of the remainder of the member's average annual salary
20 multiplied by the number of years of the member's total service
21 credit.

22 B. Retirement benefits for a member retired pursuant
23 to the Educational Retirement Act on or after July 1, 1967 but
24 on or before June 30, 1971 shall be paid monthly and shall be
25 one-twelfth of a sum equal to one and one-half percent of the

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underscoring material = new
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1 first six thousand six hundred dollars (\$6,600) of the member's
2 average annual salary and one percent of the remainder of the
3 member's average annual salary multiplied by the number of
4 years of the member's total service credit.

5 C. Retirement benefits for a member retired pursuant
6 to the Educational Retirement Act on or after July 1, 1971 but
7 on or before June 30, 1974 shall be paid monthly and shall be
8 one-twelfth of a sum equal to one and one-half percent of the
9 member's average annual salary multiplied by the number of
10 years of the member's total service credit.

11 D. Retirement benefits for a member retired pursuant
12 to the Educational Retirement Act on or before June 30, 1974
13 but returning to employment on or after July 1, 1974 for a
14 cumulation of one or more years shall be computed pursuant to
15 Subsection E of this section. Retirement benefits for a member
16 retired pursuant to the Educational Retirement Act on or before
17 June 30, 1974 but returning to employment on or after July 1,
18 1974 for a cumulation of less than one year shall be computed
19 pursuant to Subsection A of this section if the member's date
20 of last retirement was on or before June 30, 1967 or pursuant
21 to Subsection B of this section if the member's date of last
22 retirement was on or after July 1, 1967 but not later than June
23 30, 1971 or pursuant to Subsection C of this section if the
24 member's date of last retirement was on or after July 1, 1971
25 but not later than June 30, 1974.

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1 E. Retirement benefits for a member age sixty years
2 or [~~over~~] older, retired pursuant to the Educational Retirement
3 Act on or after July 1, 1974 but not later than June 30, 1987,
4 shall be paid monthly and shall be one-twelfth of a sum equal
5 to:

6 (1) one and one-half percent of the member's
7 average annual salary multiplied by the number of years of
8 service credit for:

9 (a) prior employment; and

10 (b) allowed service credit for service
11 performed prior to July 1, 1957, except United States military
12 service credit purchased pursuant to Paragraph (3) of
13 Subsection A of Section 22-11-34 NMSA 1978; plus

14 (2) two percent of the member's average annual
15 salary multiplied by the number of years of service credit for:

16 (a) contributory employment;

17 (b) allowed service credit for service
18 performed after July 1, 1957; and

19 (c) United States military service credit
20 for service performed prior to July 1, 1957 and purchased
21 pursuant to Paragraph (3) of Subsection A of Section 22-11-34
22 NMSA 1978.

23 F. Retirement benefits for a member age sixty years
24 or [~~over~~] older, retired pursuant to the Educational Retirement
25 Act on or after July 1, 1987 but not later than June 30, 1991,

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1 shall be paid monthly and shall be one-twelfth of a sum equal
2 to two and fifteen hundredths percent of the member's average
3 annual salary multiplied by the number of years of the member's
4 total service credit; provided that this subsection shall not
5 apply to any member who was retired in any of the four quarters
6 ending on June 30, 1987 without having accumulated not less
7 than 1.0 years earned service credit after June 30, 1987.

8 G. The retirement benefits provisions of this
9 subsection shall not apply to a member who was retired in any
10 of the four consecutive quarters ending on June 30, 1991
11 without having acquired at least one year of earned service
12 credit beginning on or after July 1, 1991. Retirement benefits
13 for a member [~~age sixty or over~~] retired pursuant to Section
14 22-11-23 NMSA 1978 on or after July 1, 1991, shall be paid
15 monthly and shall be one-twelfth of a sum equal to two and
16 thirty-five hundredths percent of the member's average annual
17 salary multiplied by the number of years of the member's total
18 service credit; provided that [~~this subsection shall not apply~~
19 ~~to any member who was retired in any of the four consecutive~~
20 ~~quarters ending on June 30, 1991 without having accumulated at~~
21 ~~least one year earned service credit beginning on or after July~~
22 ~~1, 1991]~~ the benefits for a member who is younger than sixty
23 years of age and is retiring pursuant to Paragraph (1) of
24 Subsection A or Paragraph (1) or (3) of Subsection D of Section
25 22-11-23 NMSA 1978 shall be reduced by:

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1 (1) six-tenths percent for each one-fourth, or
2 portion thereof, year that retirement occurs prior to the
3 member's sixtieth birthday but after the member's fifty-fifth
4 birthday; and

5 (2) one and eight-tenths percent for each one-
6 fourth, or portion thereof, year that retirement occurs prior
7 to the member reaching the age of fifty-five years.

8 H. Retirement benefits for a member, retired pursuant
9 to Section 22-11-23.1 NMSA 1978, shall be paid monthly and
10 shall be one-twelfth of a sum equal to two and thirty-five
11 hundredths percent of the member's average annual salary
12 multiplied by the number of years of the member's total service
13 credit; provided that the benefit for a member retiring
14 pursuant to Paragraph (3) of Subsection A or Paragraph (1) or
15 (3) of Subsection B of Section 22-11-23.1 NMSA 1978 shall be
16 reduced by:

17 (1) six-tenths [~~of one~~] percent for each one-
18 fourth, or portion thereof, year that retirement occurs prior
19 to the member's sixty-fifth birthday but after the sixtieth
20 birthday; and

21 (2) one and eight-tenths percent for each one-
22 fourth, or portion thereof, year that retirement occurs prior
23 to the member's sixtieth birthday.

24 I. A member's average annual salary, pursuant to this
25 section, shall be computed on the basis of the last five years

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1 for which contribution was made or upon the basis of any
2 consecutive five years for which contribution was made by the
3 member, whichever is higher; provided, however, that lump-sum
4 payments made after July 1, 2010 of accrued sick leave or
5 annual leave shall be excluded from the calculation of salary.

6 J. Unless otherwise required by the provisions of the
7 Internal Revenue Code of 1986, members shall begin receiving
8 retirement benefits by age seventy and six months, or upon
9 termination of employment, whichever occurs later."

10 SECTION 6. Section 22-11-31 NMSA 1978 (being Laws 1979,
11 Chapter 333, Section 2, as amended) is amended to read:

12 "22-11-31. COST-OF-LIVING ADJUSTMENT--ADDITIONAL
13 CONTRIBUTIONS.--

14 A. For the purposes of this section:

15 (1) "adjustment factor" means a multiplicative
16 factor computed to provide an annuity adjustment pursuant to
17 the provisions of Subsection B of this section;

18 (2) "annuity" means any benefit payable under
19 the Educational Retirement Act or the Public Employees
20 Retirement Reciprocity Act as a retirement benefit, disability
21 benefit or survivor benefit;

22 (3) "calendar year" means the full twelve months
23 beginning January 1 and ending December 31;

24 (4) "consumer price index" means the average of
25 the monthly consumer price indexes for a calendar year for the

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1 entire United States for all items as published by the United
2 States department of labor;

3 (5) "next preceding calendar year" means the
4 full calendar year immediately prior to the preceding calendar
5 year; and

6 (6) "preceding calendar year" means the full
7 calendar year preceding the July 1 on which a benefit is to be
8 adjusted.

9 B. [~~On or after July 1, 1984~~] Each annuity shall be
10 adjusted annually and cumulatively commencing on July 1 of the
11 year in which a member attains the age of sixty-five or on July
12 1 following the year a member retires, whichever is later. The
13 annuity shall be adjusted by applying an adjustment factor that
14 results in an adjustment equal to [~~one-half~~] forty-three and
15 seventy-five hundredths percent of the percentage increase of
16 the consumer price index between the next preceding calendar
17 year and the preceding calendar year, except that the
18 adjustment shall not exceed [~~four~~] three and one-half percent,
19 in absolute value, nor be less than [~~two~~] one and three-fourths
20 percent, in absolute value. In the event that the percentage
21 increase of the consumer price index is less than two percent,
22 in absolute value, the adjustment factor shall be [~~the same as~~]
23 eighty-seven and five-tenths percent of the percentage increase
24 of the consumer price index. Annuities shall not be decreased
25 in the event that there is a decrease in the consumer price

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1 index between the next preceding calendar year and the
2 preceding calendar year.

3 C. A retired member whose benefit is subject to
4 adjustment under the provisions of the Educational Retirement
5 Act in effect prior to July 1, 1984 shall have the member's
6 annuity readjusted annually and cumulatively under the
7 provisions of that act in effect prior to July 1, 1984 until
8 July 1 of the year in which the member attains the age of
9 sixty-five, when the member shall have the annuity readjusted
10 annually and cumulatively under the provisions of this section.

11 A member who retires after attaining the age of sixty-five
12 shall have the member's annuity adjusted annually and
13 cumulatively commencing on July 1 of the year following the
14 member's retirement.

15 D. A retired member who returns to work shall be
16 subject to the provisions of this section as they exist at the
17 time of the member's final retirement.

18 E. Benefits of a member who is on a disability status
19 in accordance with Section 22-11-35 NMSA 1978 or a member who
20 is certified by the board [~~certifies was~~] as disabled at
21 regular retirement shall be adjusted in accordance with
22 Subsections B and C of this section, except that the benefits
23 shall be adjusted annually and cumulatively commencing on July
24 1 of the third full year following the year in which the member
25 was approved by the board for disability or retirement.

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1 F. The board shall adjust the benefits of each person
2 receiving an annuity as of June 30, 1999. The adjustment shall
3 be made on July 1, 1999 on the basis of an increase of two
4 dollars (\$2.00) per month for each year since the member's last
5 retirement plus an increase of one dollar (\$1.00) per month for
6 each year of credited service at the time of the last
7 retirement."

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SENATE BILL

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

FOR THE INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

AN ACT

RELATING TO PUBLIC FINANCES; INCREASING THE PERCENTAGE OF THE SEVERANCE TAX PERMANENT FUND ALLOCATED TO THE SMALL BUSINESS INVESTMENT CORPORATION FOR INVESTMENT; REQUIRING THAT THE SMALL BUSINESS INVESTMENT CORPORATION COMMIT FUNDS WITHIN THREE YEARS; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2007.

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

SECTION 1. Section 7-27-5.15 NMSA 1978 (being Laws 1990, Chapter 126, Section 5, as amended by Laws 2007, Chapter 355, Section 1 and by Laws 2007, Chapter 359, Section 1 and also by Laws 2007, Chapter 360, Section 1) is amended to read:

"7-27-5.15. NEW MEXICO PRIVATE EQUITY FUNDS AND BUSINESS INVESTMENTS.--

A. No more than [~~nine~~] ten percent of the market

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1 value of the severance tax permanent fund may be invested in
2 New Mexico private equity funds or New Mexico businesses under
3 this section.

4 B. In making investments pursuant to Subsection A of
5 this section, the council shall make investments in New Mexico
6 private equity funds or New Mexico businesses whose investments
7 or enterprises enhance the economic development objectives of
8 the state.

9 C. The state investment officer shall make
10 investments pursuant to Subsection A of this section only upon
11 approval of the council, upon review of the recommendation of
12 the private equity investment advisory committee and within
13 guidelines and policies established by the council.

14 D. As used in this section:

15 (1) "New Mexico business" means, in the case of
16 a corporation or limited liability company, a business with its
17 principal office and a majority of its full-time employees
18 located in New Mexico or, in the case of a limited partnership,
19 a business with its principal place of business and eighty
20 percent of its assets located in New Mexico; and

21 (2) "New Mexico private equity fund" means a
22 limited partnership, limited liability company or corporation
23 organized and operating in the United States and maintaining an
24 office staffed by a full-time investment officer in New Mexico
25 that:

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1 (a) has as its primary business activity the
2 investment of funds in return for equity in or debt of
3 businesses for the purpose of providing capital for start-up,
4 expansion, product or market development, recapitalization or
5 similar business purposes;

6 (b) holds out the prospects for capital
7 appreciation from such investments;

8 (c) has at least one full-time manager with
9 at least three years of professional experience in assessing
10 the growth prospects of businesses or evaluating business plans
11 and who has established permanent residency in the state;

12 (d) is committed to investing or helps
13 secure investing by others, in an amount at least equal to the
14 total investment made by the state investment officer in that
15 fund pursuant to this section, in businesses with a principal
16 place of business in the state and that hold promise for
17 attracting additional capital from individual or institutional
18 investors nationwide for businesses in the state; and

19 (e) accepts investments only from accredited
20 investors as that term is defined in Section 2 of the federal
21 Securities Act of 1933, as amended (15 USCA Section 77(b)), and
22 rules and regulations promulgated pursuant to that section, or
23 federally recognized Indian tribes, nations and pueblos with at
24 least five million dollars (\$5,000,000) in overall investment
25 assets.

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1 E. The state investment officer is authorized to make
2 investments in New Mexico businesses to create new job
3 opportunities and to support new, emerging or expanding
4 businesses in a manner consistent with the constitution of New
5 Mexico if:

6 (1) the investments are made:

7 (a) in conjunction with cooperative
8 investment agreements with parties that have demonstrated
9 abilities and relationships in making investments in new,
10 emerging or expanding businesses; or

11 (b) in New Mexico aerospace businesses that
12 have received an award from the United States government or one
13 of its agencies or instrumentalities: 1) in an amount, not
14 less than one hundred million dollars (\$100,000,000), that is
15 equal to at least ten times the investment from the severance
16 tax permanent fund; and 2) for the purpose of stimulating
17 commercial enterprises;

18 (2) an investment in any one business does not
19 exceed ten percent of the amount available for investment
20 pursuant to this section; and

21 (3) the investments represent no more than
22 fifty-one percent of the total investment capital in a
23 business; provided, however, that nothing in this subsection
24 prohibits the ownership of more than fifty-one percent of the
25 total investment capital in a New Mexico business if the

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1 additional ownership interest:

2 (a) is due to foreclosure or other action by
3 the state investment officer pursuant to agreements with the
4 business or other investors in that business;

5 (b) is necessary to protect the investment;

6 and

7 (c) does not require an additional
8 investment of the severance tax permanent fund.

9 F. The state investment officer shall make a
10 commitment to the small business investment corporation
11 pursuant to the Small Business Investment Act to invest [~~one~~]
12 two percent of the market value of the severance tax permanent
13 fund to create new job opportunities by providing capital for
14 land, buildings or infrastructure for facilities to support new
15 or expanding businesses and to otherwise make investments to
16 create new job opportunities to support new or expanding
17 businesses in a manner consistent with the constitution of New
18 Mexico. On July 1 of each year, the state investment officer
19 shall determine whether the invested capital in the small
20 business investment corporation is less than [~~one~~] two percent
21 of the market value of the severance tax permanent fund. If
22 the invested capital in the small business investment
23 corporation equals less than [~~one~~] two percent of the market
24 value of the severance tax permanent fund, further commitments
25 shall be made until the invested capital is equal to [~~one~~] two

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1 percent of the market value of the fund.

2 G. The state investment officer shall report
3 semiannually on the New Mexico private equity investments made
4 pursuant to this section. Annually, a report shall be
5 submitted to the legislature prior to the beginning of each
6 regular legislative session and a second report no later than
7 October 1 each year to the legislative finance committee, the
8 revenue stabilization and tax policy committee and any other
9 appropriate interim committee. Each report shall provide the
10 amounts invested in each New Mexico private equity fund, as
11 well as information about the objectives of the funds, the
12 companies in which each fund is invested and how each
13 investment enhances the economic development objectives of
14 the state. Each report shall provide the amounts invested in
15 each New Mexico business."

16 SECTION 2. Section 58-29-7 NMSA 1978 (being Laws 2003,
17 Chapter 399, Section 10) is amended to read:

18 "58-29-7. RETURN TO SEVERANCE TAX PERMANENT FUND.--

19 A. Annually, no later than thirty days after the
20 delivery of its annual report to the governor and the
21 legislative finance committee, the corporation shall return
22 to the severance tax permanent fund an amount equal to the
23 net excess of funds held by the corporation. For purposes of
24 this section, "net excess of funds" means the return on
25 investments to the corporation in the amount of dividends and

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1 interest actually received plus any capital gains actually
2 realized, less the operating expenses of the corporation and
3 less amounts reasonably reserved for losses.

4 B. Money allocated to the corporation for
5 investment that is not committed within three years of the
6 allocation shall revert to the severance tax permanent fund."

7 SECTION 3. EFFECTIVE DATE.--The effective date of the
8 provisions of this act is July 1, 2012.

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SENATE BILL

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

FOR THE INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

AN ACT

RELATING TO PUBLIC FINANCES; CHANGING THE MEMBERSHIP, POWERS
AND DUTIES OF THE STATE INVESTMENT COUNCIL; PROVIDING FOR THE
ELECTION OF THE CHAIR AND VICE CHAIR OF THE COUNCIL; EXTENDING
REPORTING DEADLINES.

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~~ secretary;
- (2) a member appointed by the state treasurer;
- (3) a member appointed by the commissioner of
public lands;

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1 ~~[(4) the secretary;~~
2 ~~(5) the chief financial officer of a state~~
3 ~~institution of higher education appointed by the governor with~~
4 ~~the advice and consent of the senate;~~

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

9 (4) one public member appointed by the president
10 pro tempore of the senate with the advice and consent of the
11 senate;

12 (5) one public member appointed by the minority
13 floor leader of the senate with the advice and consent of the
14 senate;

15 (6) one public member appointed by the speaker
16 of the house of representatives with the advice and consent of
17 the senate;

18 (7) one public member appointed by the minority
19 floor leader of the house of representatives with the advice
20 and consent of the senate; and

21 ~~[(7) two]~~ (8) four members appointed by the
22 governor with the advice and consent of the senate.

23 B. No more than two members of the council appointed
24 pursuant to Paragraph (8) of Subsection A of this section shall
25 be members of the same political party.

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1 ~~[B.]~~ C. The chair ~~[of the council shall be the~~
2 ~~governor]~~ and the vice chair of the council shall be selected
3 by the council from among the members appointed pursuant to
4 Paragraphs (2) through (8) of Subsection A of this section for
5 terms of two years, provided that the chair and the vice chair
6 shall serve staggered terms and shall serve no more than two
7 consecutive terms and the vice chair elected in 2012 shall
8 serve a one-year term to allow for staggered terms.

9 D. All actions of the council shall be by majority
10 vote, and a majority of the members shall constitute a quorum.

11 ~~[G.]~~ E. Members of the council appointed pursuant to
12 Paragraphs ~~[(6) and (7)]~~ (2) through (8) of Subsection A of
13 this section shall be reimbursed per diem and mileage pursuant
14 to the provisions of the Per Diem and Mileage Act."

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

17 "6-8-3. COUNCIL TERMS AND QUALIFICATIONS.--

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

24 B. The members of the council appointed pursuant to
25 Paragraphs ~~[(6) and (7)]~~ (2) through (8) of Subsection A of

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

24 C. ~~[The member appointed pursuant to Paragraph (5) of~~
25 ~~Subsection A of Section 6-8-2 NMSA 1978 shall serve at the~~

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

11 SECTION 3. Section 6-8-4 NMSA 1978 (being Laws 1957,
12 Chapter 179, Section 4, as amended) is amended to read:

13 "6-8-4. INVESTMENT OFFICE--STATE INVESTMENT OFFICER--
14 TERMS.--

15 A. There is established an "investment office". The
16 chief administrative officer of the office shall be known as
17 the "state investment officer".

18 B. The state investment officer shall be appointed by
19 the council with the advice and consent of the senate. The
20 state investment officer shall devote the officer's entire time
21 and attention to the duties of that office and shall not engage
22 in any other occupation or profession or hold any other public
23 office, appointive or elective. The state investment officer
24 shall be a person qualified, by training and investment
25 experience, to direct the work of the investment office and

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1 shall have had at least five years' professional experience as
2 an investment officer. The state investment officer shall
3 receive a salary to be determined by the [~~state investment~~]
4 council [~~but in no case less than fifty thousand dollars~~
5 (~~\$50,000~~) ~~annually~~].

6 C. The state investment officer shall serve for an
7 initial term of two years beginning July 1, 1981 and thereafter
8 for terms of four years. The state investment officer may be
9 removed from office by the council for cause."

10 SECTION 4. Section 6-8-7 NMSA 1978 (being Laws 1957,
11 Chapter 179, Section 7, as amended) is amended to read:

12 "6-8-7. POWERS AND DUTIES OF THE STATE INVESTMENT COUNCIL
13 AND STATE INVESTMENT OFFICER--INVESTMENT POLICY--INVESTMENT
14 MANAGERS.--

15 A. Subject to the limitations, conditions and
16 restrictions contained in policymaking regulations or
17 resolutions adopted by the council, the council may make
18 purchases, sales, exchanges, investments and reinvestments of
19 the assets of all funds in accordance with the Uniform Prudent
20 Investor Act. The state investment officer and the council are
21 trustees of all funds under their control and shall see that
22 money invested is at all times handled in the best interests of
23 the state. The council may delegate administrative and
24 investment-related functions to the state investment officer.

25 B. The state investment officer shall formulate and

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1 recommend to the council for approval investment [~~regulations~~
2 ~~or resolutions~~] policies pertaining to the kind or nature of
3 investments and limitations, conditions and restrictions upon
4 the methods, practices or procedures for investment,
5 reinvestment, purchase, sale or exchange transactions that
6 should govern the activities of the investment office.

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

23 D. The council shall provide an opportunity for
24 public comment at meetings of the council. Advance notice of
25 meetings shall be published on the council's web site and in a

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1 newspaper of general circulation at least ten days in advance
2 of the meeting.

3 E. All funds managed by the [~~state investment~~
4 ~~officer~~] council shall be managed in accordance with the
5 Uniform Prudent Investor Act. [~~The council may employ~~
6 ~~investment management services to invest the funds and may pay~~
7 ~~reasonable compensation for investment management services from~~
8 ~~the assets of the applicable funds, subject to budgeting and~~
9 ~~appropriation by the legislature.~~]

10 F. The council, the state investment officer, any
11 person providing investment advice to the council [~~or~~], state
12 investment officer or investment office staff for a fee or
13 other compensation and all persons exercising discretionary
14 authority or control of funds under the management of the
15 council are fiduciaries.

16 G. The council may contract for legal services for
17 litigation on a contingent or partly contingent fee basis,
18 subject to an expedited solicitation process devised and
19 approved by the council; provided that:

20 (1) amounts recovered by the legal services
21 contractor shall be deposited in the state investment council
22 suspense fund;

23 (2) the council shall submit each proposed
24 contract to the attorney general and the department for review
25 of the contingency fee. The attorney general's and the

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1 department's review shall take into account the complexity of
2 the factual and legal issues presented by the claims to be
3 pursued under the contract. If the attorney general or the
4 department advises the council that the proposed contingency
5 fee is not reasonable, the council may nevertheless approve the
6 contract and the contingency fee by a majority vote of its
7 members; and

8 (3) each prospective legal services contractor
9 seeking to represent the council on a contingent or partly
10 contingent fee basis shall file with the council the disclosure
11 required by Section 13-1-191.1 NMSA 1978 disclosing all
12 campaign contributions made to the governor, attorney general,
13 state treasurer or any member of the council, or to a political
14 committee that is intended to aid or promote the nomination or
15 election of any candidate to a state office if the committee
16 is:

17 (a) established by any of the foregoing
18 persons or their agents;

19 (b) established in consultation with or at
20 the request of any of the foregoing persons or their agents; or

21 (c) controlled by one of the foregoing
22 persons or their agents.

23 H. The council may select and contract for the
24 services of one or more custodian banks for all funds under the
25 council's management. For the purpose of this subsection,

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

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

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1 private endowment entity whose sole beneficiary is a state
2 agency.

3 J. The state investment officer shall provide
4 quarterly performance reports to the legislative finance
5 committee. Annually, the [~~state investment officer~~] council
6 shall [~~ratify and~~] provide written investment policies
7 [~~including any amendments~~] to the legislative finance
8 committee."

9 SECTION 5. Section 6-8-14 NMSA 1978 (being Laws 1957,
10 Chapter 179, Section 14, as amended) is amended to read:

11 "6-8-14. MONTHLY REPORTS.--No later than [~~ten~~] thirty
12 days after the close of each month, the state investment
13 officer shall submit to the secretary and the [~~state~~
14 ~~investment~~] council a report of the operations of the office
15 during the past month. Each report shall give a complete
16 statement of the state investment portfolio as of the time of
17 the report and, in addition, shall include a detailed summary
18 of the month's investment, reinvestment, purchase, sale and
19 exchange transactions, setting forth the investments bought,
20 sold or exchanged, the dates thereof, the prices paid or
21 obtained, the names of the dealers involved, fees paid for each
22 transaction, disclosure of contractor arrangements and a
23 statement of the funds or accounts referred to herein. [~~The~~
24 ~~reports shall also be circulated to a mailing list of~~
25 ~~investment bankers and brokers recommended by the council.~~]

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1 The reports shall be published on the web [~~sites~~] site of the
2 council [~~the legislature and the department of finance and~~
3 ~~administration~~] and shall be open for inspection to the public
4 and the press in the office of the state investment officer."

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

7 "6-8-20. PRIVATE EQUITY INVESTMENT ADVISORY COMMITTEE
8 CREATED--MEMBERSHIP--DUTIES--TERMS--LIABILITIES--CONFLICT OF
9 INTEREST.--

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

17 B. Members appointed by the council, except the
18 council member, shall be appointed for three-year terms;
19 provided that the terms of the initial committee members shall
20 be staggered so that the term of one member expires each year.
21 After the initial appointments, all appointed members shall be
22 appointed for three-year terms. Members shall serve until
23 their successors are appointed. A vacancy occurring other than
24 by expiration of term shall be filled in the same manner as the
25 original appointment, but only for the unexpired term.

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1 C. The committee shall review and make
2 recommendations to the council on investments authorized
3 pursuant to Sections 7-27-5.15 and 7-27-5.26 NMSA 1978 and all
4 other private equity investments and shall advise the council
5 in matters and policies related to such investments. The
6 committee shall establish policies for national private equity
7 fund investments, New Mexico private equity fund investments
8 and New Mexico film [~~private equity fund~~] investments [~~not less~~
9 ~~often than annually~~] and shall make copies available to
10 interested parties.

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

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

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

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

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1 H. The state investment officer may enter into
2 contracts with investment advisors for private equity fund
3 investments and film fund investments authorized pursuant to
4 Sections 7-27-5.15 and 7-27-5.26 NMSA 1978 and all other
5 private equity investments and may pay budgeted expenses for
6 the advisors from the assets of any fund administered under the
7 supervision of the council, as applicable.

8 I. As used in this section, "private equity
9 investments" means any legal entity that has as its primary
10 business activity the investment of funds in return for equity
11 in or debt of businesses for the purpose of providing capital
12 for startup, expansion, new product development,
13 recapitalization or a similar business purpose."

14 **SECTION 7. TEMPORARY PROVISION--TRANSITION MEMBERSHIP OF**
15 **STATE INVESTMENT COUNCIL.--**

16 A. On July 1, 2012, the governor, state treasurer,
17 commissioner of public lands and chief financial officer
18 appointed by the governor are no longer members of the state
19 investment council.

20 B. Within thirty days of July 1, 2012, the governor,
21 state treasurer and commissioner of public lands shall appoint
22 members of the state investment council, pursuant to Paragraphs
23 (2), (3) and (8) of Subsection A of Section 6-8-2 NMSA 1978,
24 who shall serve on an interim basis until confirmed by the
25 senate.

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HOUSE BILL

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

ENDORSED BY THE INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

AN ACT

RELATING TO PUBLIC FINANCES; IMPOSING A LIMIT ON THE PERCENTAGE OF LAND GRANT PERMANENT FUNDS THAT MAY BE INVESTED IN INTERNATIONAL EQUITIES.

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. No more than twenty-five percent of the book value
14 of the land grant permanent funds may be invested in
15 international equities at any single time.

16 [~~G.~~] D. The council shall meet at least once each
17 month, and as often as exigencies may demand, to consult with
18 the state investment officer concerning the work of the
19 investment office. The council shall have access to all files
20 and records of the investment office and shall require the
21 state investment officer to report on and provide information
22 necessary to the performance of council functions. The council
23 may hire one or more investment management firms to advise the
24 council with respect to the council's overall investment plan
25 for the investment of all funds managed by the investment

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1 office and pay reasonable compensation for such advisory
2 services from the assets of the applicable funds, subject to
3 budgeting and appropriation by the legislature. The terms of
4 any such investment management services contract shall
5 incorporate the statutory requirements for investment of funds
6 under the council's jurisdiction.

7 ~~[D-]~~ E. The council shall provide an opportunity for
8 public comment at meetings of the council. Advance notice of
9 meetings shall be published on the council's web site and in a
10 newspaper of general circulation at least ten days in advance
11 of the meeting.

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

19 ~~[F-]~~ G. The council, the state investment officer,
20 any person providing investment advice to the council or state
21 investment officer for a fee or other compensation and all
22 persons exercising discretionary authority or control of funds
23 under the management of the council are fiduciaries.

24 ~~[G-]~~ H. The council may contract for legal services
25 for litigation on a contingent or partly contingent fee basis,

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1 subject to an expedited solicitation process devised and
2 approved by the council; provided that:

3 (1) amounts recovered by the legal services
4 contractor shall be deposited in the state investment council
5 suspense fund;

6 (2) the council shall submit each proposed
7 contract to the attorney general and the department for review
8 of the contingency fee. The attorney general's and the
9 department's review shall take into account the complexity of
10 the factual and legal issues presented by the claims to be
11 pursued under the contract. If the attorney general or the
12 department advises the council that the proposed contingency
13 fee is not reasonable, the council may nevertheless approve the
14 contract and the contingency fee by a majority vote of its
15 members; and

16 (3) each prospective legal services contractor
17 seeking to represent the council on a contingent or partly
18 contingent fee basis shall file with the council the disclosure
19 required by Section 13-1-191.1 NMSA 1978 disclosing all
20 campaign contributions made to the governor, attorney general,
21 state treasurer or any member of the council, or to a political
22 committee that is intended to aid or promote the nomination or
23 election of any candidate to a state office if the committee
24 is:

25 (a) established by any of the foregoing

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1 persons or their agents;

2 (b) established in consultation with or at
3 the request of any of the foregoing persons or their agents; or

4 (c) controlled by one of the foregoing
5 persons or their agents.

6 [~~H.~~] 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 [~~I.~~] 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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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 are exempt from the New Mexico
4 Uniform Securities Act. As used in this subsection, "state
5 agency" means any branch, agency, department, board,
6 instrumentality, institution or political subdivision of the
7 state, the New Mexico finance authority, the New Mexico
8 mortgage finance authority and any tax-exempt private endowment
9 entity whose sole beneficiary is a state agency.

10 [~~J~~] K. The state investment officer shall provide
11 quarterly performance reports to the legislative finance
12 committee. Annually, the state investment officer shall ratify
13 and provide written investment policies, including any
14 amendments, to the legislative finance committee."

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

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HOUSE JOINT RESOLUTION

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

ENDORSED BY THE INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

A JOINT RESOLUTION

PROPOSING TO AMEND ARTICLE 12, SECTION 7 OF THE CONSTITUTION OF
NEW MEXICO TO PRESERVE THE LAND GRANT PERMANENT FUNDS BY
INCREASING THE DUTY OF CARE AND CHANGING THE LIMITATIONS ON
INVESTMENT.

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

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

"A. As used in this section, "fund" means the
permanent school fund described in Article 12, Section 2 of
this [~~article~~] constitution and all other permanent funds
derived from lands granted or confirmed to the state by the act
of congress of June 20, 1910, entitled "An act to enable the
people of New Mexico to form a constitution and state
government and be admitted into the union on an equal footing

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1 with the original states.".

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

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

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

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

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

25 (3) stocks eligible for purchase shall be

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1 restricted to those stocks of businesses listed upon a national
2 stock exchange or included in a nationally recognized list of
3 stocks [~~and~~

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

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

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

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

23 (1) in fiscal years 2005 through 2012, an amount
24 equal to eight-tenths percent of the average of the year-end
25 market values of the fund for the immediately preceding five

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1 calendar years; provided that any additional distribution from
2 the permanent school fund pursuant to this paragraph shall be
3 used to implement and maintain educational reforms as provided
4 by law; and

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

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

15 SECTION 2. The amendment proposed by this resolution
16 shall be submitted to the people for their approval or
17 rejection at the next general election or at any special
18 election prior to that date that may be called for that
19 purpose.

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SENATE BILL

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

ENDORSED BY THE INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

AN ACT

RELATING TO PUBLIC FINANCE; CLARIFYING DUTIES REGARDING THE
DEPOSIT AND ACCOUNTING OF PUBLIC MONEY.

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

SECTION 1. Section 6-10-3 NMSA 1978 (being Laws 1923,
Chapter 76, Section 2, as amended) is amended to read:

"6-10-3. PAYMENT OF STATE MONEY INTO TREASURY--SUSPENSE
FUNDS.--All public money in the custody or under the control of
any state official or agency obtained or received by any
official or agency from any source, except as in Section
6-10-54 NMSA 1978 provided, shall be paid into the state
treasury. It is the duty of every official or person in charge
of any state agency receiving any money in cash or by check,
draft or otherwise for or on behalf of the state or any agency
thereof from any source, except as in Section 6-10-54 NMSA 1978

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1 provided, to ~~[forthwith and]~~ record the receipt of that money
2 in the statewide accounting system and to deliver the money to
3 the state treasury before the close of the next succeeding
4 business day after the receipt of the money ~~[to deliver or~~
5 ~~remit it to the state treasurer]~~; provided, however, that:

6 A. the money collected by the state parks division of
7 the energy, minerals and natural resources department and the
8 state monuments division of the cultural affairs department
9 shall be deposited into the state treasury no later than ten
10 days following collection;

11 B. county treasurers shall remit all money received
12 for taxes for state purposes or that are by law required to be
13 remitted to the department on or before the tenth day of the
14 next succeeding month following the receipt or collection
15 thereof;

16 C. every official or person in charge of any state
17 agency receiving any money, except as in Section 6-10-54 NMSA
18 1978 provided, in cash or by check or draft, on deposit, in
19 escrow or in evidence of good faith to secure the performance
20 of any contract or agreement with the state or with any
21 department, institution or agency of the state, which money has
22 not yet been earned so as to become the absolute property of
23 the state, shall deliver or remit to the state treasury within
24 the times and in the manner as in this section provided, which
25 money shall be deposited in a suspense account to the credit of

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1 the proper official, person, board or bureau in charge of any
2 state agency so receiving the money; and

3 D. all money held by the commissioner of public lands
4 on deposit, in escrow or in evidence of good faith to secure
5 the performance of any contract or agreement with the state
6 shall be delivered or remitted to the state treasury within six
7 months from the date this act is approved and at those times,
8 in the amounts and from the various banks in which it is
9 deposited as may be directed by the state board of finance."

10 SECTION 2. Section 8-6-3 NMSA 1978 (being Laws 1851-1852,
11 Page 170, as amended) is amended to read:

12 "8-6-3. DUTIES ~~[OF TREASURER]~~ RELATING TO PUBLIC MONEY--
13 RECEIPTS.--~~[The state treasurer shall receive and keep]~~ All
14 money of the state, except when otherwise specially provided,
15 ~~[disburse the public money]~~ shall be received and kept in a
16 master depository or cash concentration account held at the
17 state's fiscal agent bank and administered by the office of the
18 state treasurer and shall be disbursed upon warrants drawn
19 according to law and not otherwise. The department of finance
20 and administration shall, through the statewide accounting
21 system, keep a just, true and comprehensive account of all
22 money received and disbursed ~~[render the state treasurer's~~
23 ~~accounts to the financial control division of the department of~~
24 ~~finance and administration annually, or more often if required;~~
25 ~~and]~~. The state treasurer shall report to the legislature, at

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1 the commencement of each regular session, a detailed statement
2 of the condition of the treasury. [~~The state treasury shall~~
3 ~~grant duplicate receipts for all money paid into the treasury,~~
4 ~~and the person receiving the duplicate receipts shall record~~
5 ~~the entry in the centralized accounting system administered by~~
6 ~~the department of finance and administration.]"~~

7 SECTION 3. EFFECTIVE DATE.--The effective date of the
8 provisions of this act is July 1, 2012.

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