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The most recent FIR version (in HTML & Adobe PDF formats) is available on the Legislative Website. The Adobe PDF version includes all attachments, whereas the HTML version does not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

### FISCAL IMPACT REPORT

SPONSOR:	HAFC		DATE TYPED:	3/20/03	HB		
SHORT TITLE: Clarify Investment			Guidelines		SB	CS/CS/9	907/HAFCS
				ANAL	YST:	Neel	
<u>REVENUE</u>							
			Subsequent	R	Recurring		Fund
Estimated Revenue			Years Impact		or Non-Re		
			rears impact	or	Non-K	ec	Affected
FY03	FY04		Tears impact	or	Non-K	ec	Affected
FY03	FY04	NFI		or	Non-R		Affected
FY03	<b>FY04</b>	NFI			Non-K		Affected

(Parenthesis ( ) Indicate Revenue Decreases)

#### SOURCES OF INFORMATION

LFC files

#### SUMMARY

#### Synopsis of Bill

House Appropriations and Finance Committee Substitute for House Taxation and Revenue Committee Substitute for Senate Finance Committee Substitute for Senate Bill 907 amends sections of statute that govern the investment criteria and standards for the Land Grant Permanent Fund (LGPF) and the Severance Tax Permanent Fund (STPF). The bill allows the investment in other investment vehicles authorized by the State Investment Council (SIC) provided that they are reviewed and approved by the Legislative Finance Committee (LFC). SIC is required to provide investment performance for the prior quarter to the LFC along with a detailed break down on investment types. The bill also notes that not more than 5 percent of the investments of the LGPF and STPF may be invested in the "other type of investments" category allowed pursuant to SB 907. Last, the bill provides that the Prudent Investor Act shall govern investment in the LGPF and STPF.

## Significant Issues

The prudent investor rule underpins the current set of investment statutes. The essence of the rule is:

"...to observe how men of prudence, discretion and intelligence manage their own affairs, not in regard to speculation, but in regard to permanent disposition of their funds, considering the probable income as well as the probable safety of the capital to be invested."

The New Mexico "Uniform Prudent Investor Act" (45-7-601, NMSA, 1978 to 45-7-612, NMSA, 1978) states a trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution. A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust. Trustees shall consider the following circumstances when managing trust assets:

- 1. general economic conditions;
- 2. the possible effect of inflation or deflation;
- 3. the expected tax consequences of investment decisions or strategies;
- 4. the role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interest in closely held enterprises, tangible and intangible personal property and real property;
- 5. the expected total return from income and the appreciation of capital;
- 6. other resources of the beneficiaries; and
- 7. needs for liquidity, regularity of income and preservation or appreciation of capital; and
- 8. an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.
- 9. A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

In Addition:

- 10. A trustee may invest in any kind of property or type of investment consistent with the standards of the Uniform Prudent Investor Act [45-7-601 to 45-7-612 NMSA 1978].
- 11. A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

## FISCAL IMPLICATIONS

• This bill will broaden investment choices to include asset classes that are currently precluded. These include derivatives and other vehicles. According to the SIC's actuary, the inability to invest in a broader diversity of investment has compromised returns in the

## Senate Bill 907/SFCS/aSCORC -- Page 3

LGPF and STPF.

# **OTHER SUBSTANTIVE ISSUES**

• The Educational Retirement Board has noted that over half the states use a statute similar to this proposal to govern their investment activity.

SN/njw:yr