

AN ACT

RELATING TO PUBLIC FINANCE; REMOVING INVESTMENT LIMITATIONS AND ESTABLISHING STANDARDS FOR PRUDENT INVESTMENT OF THE LAND GRANT PERMANENT FUNDS, THE SEVERANCE TAX PERMANENT FUND, THE EDUCATIONAL RETIREMENT FUND AND OF FUNDS ADMINISTERED PURSUANT TO THE PUBLIC EMPLOYEES RETIREMENT ACT; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

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 STATE INVESTMENT OFFICER-- INVESTMENT POLICY--INVESTMENT MANAGERS.--

A. Subject to the limitations, conditions and restrictions contained in policy-making regulations or resolutions adopted by the council and subject to prior authorization by the council, the state investment officer may make purchases, sales, exchanges, investments and reinvestments of the assets of all funds administered under the supervision of the council in accordance with the Uniform Prudent Investor Act. The state investment officer shall see that money invested is at all times handled in the best interests of the state.

B. The state investment officer shall formulate and recommend to the council for approval investment

regulations or resolutions pertaining to the kind or nature of investments and limitations, conditions and restrictions upon the methods, practices or procedures for investment, reinvestment, purchase, sale or exchange transactions that should govern the activities of the investment office.

C. The council shall meet at least once each month, and as often as exigencies may demand, to consult with the state investment officer concerning the work of the investment office. The council shall have access to all files and records of the investment office and shall require the state investment officer to report on and provide information necessary to the performance of council functions. The council may hire one or more investment management firms to advise the council with respect to the council's overall investment plan for the investment of all funds managed by the investment office and pay reasonable compensation for such advisory services from the assets of the applicable funds, subject to budgeting and appropriation by the legislature. The terms of any such investment management services contract shall incorporate the statutory requirements for investment of funds under the council's jurisdiction.

D. All funds managed by the state investment officer shall be managed in accordance with the Uniform Prudent Investor Act. With the approval of the council, the state investment officer may employ investment management

services to invest the funds and may pay reasonable compensation for investment management services from the assets of the applicable funds, subject to budgeting and appropriation by the legislature.

E. For funds available for investment for more than one year, the state investment officer may contract with any state agency to provide investment advisory or investment management services, separately or through a pooled investment fund, provided the state agency enters into a joint powers agreement with the council and that state agency pays at least the direct cost of such services. Notwithstanding any statutory provision governing state agency investments, the state investment officer may invest funds available from a state agency pursuant to a joint powers agreement in any type of investment permitted for the land grant permanent funds under the prudent investor rule. In performing investment services for a state agency, the council and the state investment officer are exempt from the New Mexico Securities Act of 1986. As used in this subsection, "state agency" means any branch, agency, department, board, instrumentality, institution or political subdivision of the state, the New Mexico finance authority and any tax-exempt private endowment entity whose sole beneficiary is a state agency.

F. The state investment officer shall provide quarterly performance reports to the legislative finance

committee. Annually, the state investment officer shall ratify and provide written investment policies, including any amendments, to the legislative finance committee."

Section 2. Section 6-8-20 NMSA 1978 (being Laws 1987, Chapter 219, Section 3, as amended) is amended to read:

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

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

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

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

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

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

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

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

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

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

Section 3. Section 7-27-5 NMSA 1978 (being Laws 1983, Chapter 306, Section 7, as amended) is amended to read:

"7-27-5. INVESTMENT OF SEVERANCE TAX PERMANENT FUND.--
The severance tax permanent fund shall be invested in separate differential rate and market rate investment classes.
"Differential rate investments" are permitted in Sections 7-27-5.3 through 7-27-5.5, 7-27-5.13 through 7-27-5.17, 7-27-5.22 and 7-27-5.24 through 7-27-5.26 NMSA 1978 and are intended to stimulate the economy of New Mexico and to provide income to the severance tax permanent fund. "Market rate investments" are investments that are not differential rate investments and are intended to provide income to the

severance tax permanent fund. All market rate investments and differential rate investments shall be invested in accordance with the Uniform Prudent Investor Act and shall be accounted for in accordance with generally accepted accounting principles."

Section 4. Section 10-11-132 NMSA 1978 (being Laws 1987, Chapter 253, Section 132, as amended) is amended to read:

"10-11-132. INVESTMENT OF FUNDS--PRUDENT INVESTOR STANDARD--INDEMNIFICATION OF BOARD MEMBERS.--The funds created by the state retirement system acts are trust funds of which the retirement board is trustee. Members of the retirement board jointly and individually shall be indemnified by the state from the funds administered by the retirement board from all claims, demands, suits, actions, damages, judgments, costs, charges and expenses, including court costs and attorney fees and against all liability losses and damages of any nature that members shall or may sustain by reason of any decision made in the performance of their duties pursuant to the state retirement system acts. The retirement board shall invest and reinvest the funds in accordance with the Uniform Prudent Investor Act."

Section 5. Section 10-11-133 NMSA 1978 (being Laws 1987, Chapter 253, Section 133, as amended) is amended to read:

"10-11-133. INVESTMENT OF FUNDS--PRUDENT INVESTOR
STANDARD--CONDITIONS.--

A. Commissions paid for the purchase and sale of any security shall not exceed brokerage rates prescribed and approved by stock exchanges that have been approved by or are under the control of the United States securities and exchange commission or by industry practice.

B. The retirement board shall invest and manage the funds administered by the retirement board in accordance with the Uniform Prudent Investor Act.

C. The retirement board shall provide quarterly performance reports to the legislative finance committee and the department of finance and administration. Annually, the retirement board shall ratify and provide its written investment policy, including any amendments, to the legislative finance committee and the department of finance and administration.

D. Securities purchased with money from or held for any fund administered by the retirement board and for which the retirement board is trustee shall be in the custody of the state treasurer who shall, at the direction of the retirement board, deposit with a bank or trust company the securities for safekeeping or servicing.

E. The retirement board may consult with the state investment council or state investment officer and request

information or advice with respect to the retirement board's overall investment plan, may utilize the services of the state investment council and state investment officer and may act on their advice concerning the plan. The state investment council and state investment officer shall render investment services to the retirement board without expense to the retirement board. The retirement board may also employ the investment management services and related management services of a trust company or national bank exercising trust powers or of an investment counseling firm or brokers for the purchase and sale of securities, commission recapture and transitioning services and may pay reasonable compensation for such services from funds administered by the retirement board. The terms of any such investment management services contract shall incorporate the statutory requirements for investment of funds under the retirement board's jurisdiction.

F. Except as provided in the Public Employees Retirement Act, a member of the retirement board, employee of the retirement board or any person connected with the retirement board in any manner shall not:

(1) have any direct or indirect interest in the gains or profits of any investment made by the retirement board;

(2) receive any direct or indirect pay or emolument for services provided to the retirement board or the

association;

(3) directly or indirectly, for the member, employee or person, for themselves or as agent or partner of others, borrow any of the funds or deposits of the association or in any manner use them except to make current and necessary payments authorized by the retirement board; or

(4) become an endorser or surety or become in any manner an obligor for money of the retirement board loaned or borrowed."

Section 6. Section 22-11-13 NMSA 1978 (being Laws 1967, Chapter 16, Section 137, as amended) is amended to read:

"22-11-13. BOARD AUTHORITY TO INVEST THE FUND--PRUDENT INVESTOR STANDARD--INDEMNIFICATION OF BOARD.--

A. The board is authorized to invest or reinvest the fund in accordance with the Uniform Prudent Investor Act.

B. The board shall provide quarterly performance reports to the legislative finance committee and the department of finance and administration. Annually, the board shall ratify and provide its written investment policy, including any amendments, to the legislative finance committee and the department of finance and administration.

C. The board or its designated agent may enter into contracts for the temporary exchange of securities for the use by broker-dealers, banks or other recognized institutional investors, for periods not to exceed one year,

for a specified fee or consideration. Such a contract shall not be entered into unless the contract is fully secured by a collateralized, irrevocable letter of credit running to the board, cash or equivalent collateral of at least one hundred two percent of the market value of the securities plus accrued interest temporarily exchanged. This collateral shall be delivered to the state fiscal agent or its designee contemporaneously with the transfer of funds or delivery of the securities. Such contract may authorize the board to invest cash collateral in instruments or securities that are authorized fund investments and may authorize payment of a fee from the fund or from income generated by the investment of cash collateral to the borrower of securities providing cash as collateral. The board may apportion income derived from the investment of cash collateral to pay its agent in securities lending transactions.

D. Commissions paid for the purchase or sale of any securities pursuant to the provisions of the Educational Retirement Act shall not exceed brokerage rates prescribed and approved by national stock exchanges or by industry practice.

E. Securities purchased for the fund shall be held in the custody of the state treasurer. At the direction of the board, the state treasurer shall deposit with a bank or trust company the securities for safekeeping or servicing.

F. The board may consult with the state investment

council or the state investment officer; may request from the state investment council or the state investment officer any information, advice or recommendations with respect to investment of the fund; may utilize the services of the state investment council or the state investment officer; and may act upon any advice or recommendations of the state investment council or the state investment officer. The state investment council or the state investment officer shall render investment advisory services to the board upon request and without expense to the board. The board may also employ the investment management services and related management services of a trust company or national bank exercising trust powers or of an investment counseling firm or brokers for the purchase and sale of securities, commission recapture and transitioning services and may pay reasonable compensation for those services from funds administered by the board.

G. Members of the board, jointly and individually, shall be indemnified from the fund by the state from all claims, demands, suits, actions, damages, judgments, costs, charges and expenses, including court costs and attorney fees, and against all liability, losses and damages of any nature whatsoever that members shall or may at any time sustain by reason of any decision made in the performance of their duties pursuant to this section."

Section 7. REPEAL.--

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A. Sections 6-8-9, 6-8-17 through 6-8-19 and 6-8-21 NMSA 1978 (being Laws 1957, Chapter 179, Section 9, Laws 1970, Chapter 2, Sections 1 and 2, Laws 1987, Chapter 126, Section 1 and Laws 1997, Chapter 183, Section 5, as amended) are repealed.

B. Sections 7-27-5.1, 7-27-5.6, 7-27-5.16, 7-27-5.23 and 7-27-5.25 NMSA 1978 (being Laws 1983, Chapter 306, Section 8, Laws 1987, Chapter 219, Section 2, Laws 1990, Chapter 127, Section 10, Laws 1997, Chapter 45, Section 3 and Laws 2000, Chapter 5, Section 4, as amended) are repealed.

Section 8. ACT NOT SEVERABLE.--If any part or application of this act is held invalid, the remainder or its application to other situations or persons shall likewise be invalid. The provisions of this act are not severable.

Section 9. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.=====