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SENATE BILL 238

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

Cisco McSorley

AN ACT

RELATING TO STATE INVESTMENTS; REMOVING THE GOVERNOR FROM THE STATE INVESTMENT COUNCIL; AMENDING THE POWERS AND DUTIES OF THE STATE BOARD OF FINANCE, THE STATE INVESTMENT COUNCIL, THE PUBLIC EMPLOYEES RETIREMENT BOARD AND THE EDUCATIONAL RETIREMENT BOARD; CLARIFYING FIDUCIARIES OF THE STATE INVESTMENT COUNCIL, THE PUBLIC EMPLOYEES RETIREMENT BOARD AND THE EDUCATIONAL RETIREMENT BOARD; RESTRICTING THE RECEIPT OF GIFTS AND CAMPAIGN CONTRIBUTIONS BY CERTAIN MEMBERS OF THE STATE INVESTMENT COUNCIL; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2005.

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

Section 1. Section 6-1-1 NMSA 1978 (being Laws 1923, Chapter 76, Section 3, as amended) is amended to read:

"6-1-1. MEMBERSHIP OF STATE BOARD OF FINANCE--POWERS AND
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1 DUTIES--ESTABLISHMENT IN CONNECTION WITH THE BOARD OF FINANCE
2 DIVISION OF THE DEPARTMENT OF FINANCE AND ADMINISTRATION.--

3 A. The state board of finance shall consist of
4 seven members:

5 (1) the governor;

6 (2) the lieutenant governor;

7 (3) the state treasurer; and

8 (4) four members appointed by the governor
9 with the advice and consent of the senate, no more than two of
10 these members to be from the same political party.

11 B. The terms of office for members appointed by the
12 governor shall be two years. The term of each remaining member
13 shall be coextensive with ~~[his]~~ the member's term of office.
14 If the office of lieutenant governor becomes vacant, ~~[his]~~ the
15 lieutenant governor's position on the state board of finance
16 shall remain vacant until the election and qualification of a
17 new lieutenant governor.

18 C. Members of the state board of finance, other
19 than the governor and the state treasurer, shall be reimbursed
20 for attending meetings of the board as provided in the Per Diem
21 and Mileage Act and shall receive no other compensation,
22 perquisite or allowance.

23 D. The governor shall be president of the state
24 board of finance, and the board shall annually elect a
25 secretary from its membership. Meetings of the board shall be

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1 held at the state capitol at times determined by the governor.
2 Four voting members of the board constitute a quorum for the
3 transaction of business. Minutes of all proceedings and
4 transactions of the board shall be kept in the offices of the
5 department of finance and administration.

6 E. Except as otherwise provided by law, the state
7 board of finance, in addition to other powers and duties
8 provided by law, has general supervision of the fiscal affairs
9 of the state and of the safekeeping and depositing of all money
10 and securities belonging to or in the custody of the state, and
11 it may make rules and regulations for carrying out the
12 provisions of [~~Sections 6-1-1~~] this section and Sections
13 6-10-2, 6-10-3, 6-10-20, 6-10-29, 6-10-37 through 6-10-44,
14 6-10-46, 6-10-47, 6-10-50, 6-10-52 through 6-10-54, 6-10-58 and
15 6-10-61 NMSA 1978. The board shall have access to all reports
16 and correspondence relating to the condition of banks and
17 savings and loan associations whose deposits are insured by an
18 agency of the United States in this state [~~which~~] that are in
19 the financial institutions division of the regulation and
20 licensing department or any department or agency of the state.
21 If the board deems action necessary to enable it to perform its
22 duties, it may require the director of the financial
23 institutions division to make a special examination of any
24 state bank or trust company or any state savings and loan
25 association whose deposits are insured by an agency of the

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1 United States.

2 F. The state board of finance may make
3 investigations it deems necessary to enable it to perform the
4 duties imposed on it by law and may instruct the director of
5 the board of finance division to employ experts, auditors,
6 accountants and attorneys as it may, from time to time, deem
7 necessary and prescribe their duties and fix their compensation
8 within the appropriations made for that purpose by the
9 legislature for use by the board.

10 G. The state board of finance is established in
11 connection with the board of finance division of the department
12 of finance and administration. The secretary of finance and
13 administration, with the approval of the board, shall appoint a
14 director of the division. This subsection shall not be
15 construed to affect the exercise of any board power or duty nor
16 shall it be construed as placing the board under the provisions
17 of the Executive Reorganization Act or the provisions of
18 Section 9-6-5 NMSA 1978."

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

21 "6-8-2. STATE INVESTMENT COUNCIL.--

22 A. There is created a "state investment council".
23 The council shall be composed of:

24 [~~A. the governor;~~

25 ~~B.] (1) the state treasurer;~~

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1 [~~G.~~] (2) the commissioner of public lands;
2 [~~D.~~] (3) the secretary;
3 [~~E.~~] (4) three public members appointed by the
4 governor with the advice and consent of the senate;
5 [~~F.~~] (5) the state investment officer; and
6 [~~G.~~] (6) the chief financial officer of a
7 state institution of higher education appointed by the governor
8 with the advice and consent of the senate.

9 [~~The chairman of~~] B. The council shall [~~be the~~
10 ~~governor~~] elect from its membership a chair and vice chair.
11 All actions of the council shall be by majority vote, and at
12 least three members appointed pursuant to [~~Subsections E and G~~]
13 Paragraphs (4) and (6) of Subsection A of this section must be
14 present to constitute a quorum.

15 C. Members of the council appointed pursuant to
16 Paragraph (4) of Subsection [E] A of this section shall be
17 reimbursed per diem and mileage pursuant to the provisions of
18 the Per Diem and Mileage Act."

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

21 "6-8-3. COUNCIL TERMS AND QUALIFICATIONS.--

22 A. Members of the council appointed by the
23 governor, with the advice and consent of the senate, shall
24 serve for staggered terms of five years. Members of the
25 council shall serve until their successors are appointed and

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1 have qualified.

2 B. The members of the council appointed pursuant to
3 Paragraph (4) of Subsection [E] A of Section 6-8-2 NMSA 1978
4 shall be qualified by competence and experience in the field of
5 investment or finance. During tenure, a member of the council
6 shall not be engaged in any capacity in the sale of securities
7 to the state. Members of the council and officers and
8 employees of the council shall be governed by the provisions of
9 the [~~Conflict of Interest~~] Governmental Conduct Act. Nothing
10 in this section or in the [~~Conflict of Interest~~] Governmental
11 Conduct Act shall be construed as prohibiting an officer of a
12 financial institution from participating as a member of the
13 council in setting general policies of the council, nor shall
14 any provision of the [~~Conflict of Interest~~] Governmental
15 Conduct Act prohibit the council or the state treasurer from
16 depositing funds under the jurisdiction of the council in any
17 financial institution. A council member shall not hold an
18 office or employment in a political party.

19 C. Any member of the council appointed pursuant to
20 Paragraph (4) or (6) of Subsection [E or G] A of Section 6-8-2
21 NMSA 1978 may be removed from the council by the governor, for
22 cause, in the manner provided for removal of members of boards
23 of regents under Article 12, Section 13 of the constitution of
24 New Mexico. A vacancy in the membership of the council
25 occurring other than by expiration of term shall be filled in

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1 the same manner as the original appointment but for the
2 unexpired term only."

3 Section 4. Section 6-8-7 NMSA 1978 (being Laws 1957,
4 Chapter 179, Section 7, as amended by Laws 2005, Chapter 194,
5 Section 1 and by Laws 2005, Chapter 240, Section 1) is amended
6 to read:

7 "6-8-7. POWERS AND DUTIES OF STATE INVESTMENT OFFICER--
8 INVESTMENT POLICY--INVESTMENT MANAGERS.--

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

19 B. The state investment officer shall formulate and
20 recommend to the council for approval investment regulations or
21 resolutions pertaining to the kind or nature of investments and
22 limitations, conditions and restrictions upon the methods,
23 practices or procedures for investment, reinvestment, purchase,
24 sale or exchange transactions that should govern the activities
25 of the investment office.

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

17 D. All funds managed by the state investment
18 officer shall be managed in accordance with the Uniform Prudent
19 Investor Act. With the approval of the council, the state
20 investment officer may employ investment management services to
21 invest the funds and may pay reasonable compensation for
22 investment management services from the assets of the
23 applicable funds, subject to budgeting and appropriation by the
24 legislature.

25 E. The council, state investment officer, any

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1 person providing investment advice to the council or state
2 investment officer for a fee or other compensation and all
3 persons exercising discretionary authority or control of funds
4 under the management of the council are fiduciaries.

5 F. The council may select and contract for the
6 services of one or more custodian banks for all funds under the
7 council's management. For the purpose of this subsection,
8 "custodian bank" means a financial institution with the general
9 fiduciary duties to manage, control and collect the assets of
10 an investment fund, including receiving all deposits and paying
11 all disbursements as directed by staff, safekeeping of assets,
12 coordination of asset transfers, timely settlement of
13 securities transactions and accurate and timely reporting of
14 the assets by individual account and in total.

15 [~~E.~~] G. For funds available for investment for more
16 than one year, the state investment officer may contract with
17 any state agency to provide investment advisory or investment
18 management services, separately or through a pooled investment
19 fund, provided the state agency enters into a joint powers
20 agreement with the council and that state agency pays at least
21 the direct cost of such services. Notwithstanding any
22 statutory provision governing state agency investments, the
23 state investment officer may invest funds available from a
24 state agency pursuant to a joint powers agreement in any type
25 of investment permitted for the land grant permanent funds

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1 under the prudent investor rule. In performing investment
2 services for a state agency, the council and the state
3 investment officer are exempt from the New Mexico Securities
4 Act of 1986. As used in this subsection, "state agency" means
5 any branch, agency, department, board, instrumentality,
6 institution or political subdivision of the state, the New
7 Mexico finance authority, the New Mexico mortgage finance
8 authority and any tax-exempt private endowment entity whose
9 sole beneficiary is a state agency.

10 [F-] H. 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 5. A new section of Chapter 6, Article 8 NMSA
16 1978 is enacted to read:

17 "[NEW MATERIAL] RESTRICTIONS ON RECEIPT OF GIFTS AND
18 CAMPAIGN CONTRIBUTIONS.--

19 A. Except for gifts of food or beverage given in a
20 place of public accommodation, consumed at the time of receipt,
21 not exceeding fifty dollars (\$50.00) for a single gift and the
22 aggregate value of which gifts may not exceed one hundred fifty
23 dollars (\$150) in a calendar year, the state investment
24 officer, council members and employees of the council shall not
25 receive or accept anything of value directly or indirectly from

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1 a person who:

2 (1) has a current contract with the council;

3 (2) is a potential bidder, offeror or
4 contractor for the provision of services or personal property
5 to the council;

6 (3) is authorized to invest public funds
7 pursuant to state or federal law or is an employee or agent of
8 such a person; or

9 (4) is an organization, association or other
10 entity having a membership that includes persons described in
11 Paragraphs (1) through (3) of this subsection.

12 B. No person who is a candidate in a primary or
13 general election for a position that qualifies the person for
14 ex-officio membership on the council and no member serving ex
15 officio on the council shall accept anything of a value of more
16 than twenty-five dollars (\$25.00) as a contribution to an
17 ex-officio member's statewide campaign in a primary or general
18 election or as a contribution to the campaign of a nominee for
19 membership on the board as a member elected by all or some of
20 the members of the association from a person who:

21 (1) has a current contract with the council;

22 (2) is a potential bidder, offeror or
23 contractor for the provision of services or personal property
24 to the council;

25 (3) is authorized to invest public funds

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1 pursuant to state or federal law or is an employee or agent of
2 such a person; or

3 (4) is an organization, association or other
4 entity having a membership that includes persons described in
5 Paragraphs (1) through (3) of this subsection."

6 Section 6. Section 10-11-130 NMSA 1978 (being Laws 1987,
7 Chapter 253, Section 130, as amended) is amended to read:

8 "10-11-130. RETIREMENT BOARD--AUTHORITY--MEMBERSHIP.--

9 A. The "retirement board" is created and is the
10 trustee of the association and the funds created by the state
11 retirement system acts and has all the powers necessary or
12 convenient to carry out and effectuate the purposes and
13 provisions of the state retirement system acts, including, in
14 addition to any specific powers provided for in the Public
15 Employees Retirement Act but without limiting the generality of
16 the foregoing, the power to:

17 (1) administer the state retirement system
18 acts, including the management of the association and making
19 effective the provisions of those acts, as well as to
20 administer and manage any other employee benefit acts as
21 provided by law;

22 (2) in addition to utilizing services of the
23 attorney general and notwithstanding any other provision of
24 law, employ or contract with and compensate competent legal
25 counsel to handle the legal matters and litigation of the

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1 retirement board and the association and to give advice and
2 counsel in regard to any matter connected with the duties of
3 the retirement board;

4 (3) administer oaths;

5 (4) adopt and use a seal for authentication of
6 records, processes and proceedings;

7 (5) create and maintain records relating to
8 all members, affiliated public employers and all activities and
9 duties required of the retirement board;

10 (6) issue subpoenas and compel the production
11 of evidence and attendance of witnesses in connection with any
12 hearings or proceedings of the retirement board;

13 (7) make and execute contracts;

14 (8) purchase, acquire or hold land adjacent to
15 the state capitol grounds or other suitable location and build
16 thereon a building to house the association and its employees
17 and, in the event additional office space is available in the
18 building after the retirement board and its employees have been
19 housed, to rent or lease the additional space to any public
20 agency or private person; provided that first priority for the
21 rental or leasing shall be to public agencies and further
22 provided that for the purpose of purchasing, acquiring or
23 holding the land and the building thereon, the retirement board
24 may use funds from the income fund and any other funds
25 controlled by the retirement board the use of which for such

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1 purposes is not prohibited by law;

2 (9) after the sale of the land and building
3 acquired pursuant to Paragraph (8) of this subsection, acquire
4 land and build thereon a new building to house the association
5 and its employees and hold the building and land in fee simple
6 in the name of the association. In order to acquire the land
7 and plan, design and construct the building, the retirement
8 board may expend the proceeds of the sale of the land and
9 building acquired pursuant to Paragraph (8) of this subsection
10 or any funds controlled by the board, the use of which for such
11 purposes is not otherwise prohibited by law;

12 (10) make and adopt such reasonable rules as
13 may be necessary or convenient to carry out the duties of the
14 retirement board and activities of the association, including
15 any rules necessary to preserve the status of the association
16 as a qualified pension plan under the provisions of the
17 Internal Revenue Code of 1986, as amended, or under successor
18 or related provisions of law; [~~and~~]

19 (11) designate committees and designate
20 committee members, including individuals who may not be members
21 of the association; and

22 (12) select and contract for the services of
23 one or more custodian banks for all funds under the retirement
24 board's management. For the purpose of this subsection,
25 "custodian bank" means a financial institution with the general

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

7 B. The retirement board consists of:

- 8 (1) the secretary of state;
9 (2) the state treasurer;
10 (3) four members under a state coverage plan
11 to be elected by the members under state coverage plans;
12 (4) four members under a municipal coverage
13 plan to be elected by the members under municipal coverage
14 plans, provided one member shall be a municipal member employed
15 by a county; and
16 (5) two retired members to be elected by the
17 retired members of the association.

18 C. The results of elections of elected members of
19 the retirement board shall be certified at the annual meeting
20 of the association. Elections shall be conducted according to
21 rules the retirement board adopts from time to time.

22 D. The regular term of office of the elected
23 members of the retirement board is four years. The term of one
24 retirement board member under a state coverage plan expires
25 annually on December 31. The terms of retirement board members

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1 under a municipal coverage plan expire on December 31 of
2 noncoinciding years in the pattern set by the retirement board.
3 Members of the retirement board serve until their successors
4 have qualified.

5 E. A member elected to the retirement board who
6 fails to attend four consecutively scheduled meetings of the
7 retirement board, unless in each case excused for cause by the
8 retirement board members in attendance, is considered to have
9 resigned from the retirement board, and the retirement board
10 shall by resolution declare the office vacated as of the date
11 of adoption of the resolution. A vacancy occurring on the
12 retirement board, except in the case of an elected official,
13 shall be filled by the remaining retirement board members,
14 without requirement that a quorum be present. The member
15 appointed to fill the vacancy serves for the remainder of the
16 vacated term.

17 F. Members of the retirement board serve without
18 salary for their services as retirement board members, but they
19 shall receive those amounts authorized under the Per Diem and
20 Mileage Act.

21 G. The retirement board shall hold four regular
22 meetings each year and shall designate in advance the time and
23 place of the meetings. Special meetings and emergency meetings
24 of the retirement board may be held upon call of the [~~chairman~~]
25 chair or any three members of the retirement board. Written

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1 notice of special meetings shall be sent to each member of the
2 retirement board at least seventy-two hours in advance of the
3 special meeting. Verbal notice of emergency meetings shall be
4 given to as many members as is feasible at least eight hours
5 before the emergency meeting, and the meeting shall commence
6 with a statement of the nature of the emergency. The
7 retirement board shall adopt its own rules of procedure and
8 shall keep a record of its proceedings. All meetings of the
9 retirement board shall comply with the Open Meetings Act. A
10 majority of retirement board members shall constitute a quorum.
11 Each attending member of the retirement board is entitled to
12 one vote on each question before the retirement board, and at
13 least a majority of a quorum shall be necessary for a decision
14 by the retirement board.

15 H. Annual meetings of the members of the
16 association shall be held in Santa Fe at such time and place as
17 the retirement board shall from time to time determine.
18 Special meetings of the members of the association shall be
19 held in Santa Fe upon call of any seven retirement board
20 members. The retirement board shall send a written notice to
21 the last known residence address of each member currently
22 employed by an affiliated public employer at least ten days
23 prior to any meeting of the members of the association. The
24 notice shall contain the call of the meeting and the principal
25 purpose of the meeting. All meetings of the association shall

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1 be public and shall be conducted according to procedures the
2 retirement board shall from time to time adopt. The retirement
3 board shall keep a record of the proceedings of each meeting of
4 the association.

5 I. Neither the retirement board nor the association
6 shall allow public inspection of, or disclosure of, information
7 from any member or retiree file unless a prior release and
8 consent, in the form prescribed by the association, has been
9 executed by the member or retiree; except that applicable
10 coverage plans, amounts of retirement plan contributions made
11 by members and affiliated public employers, pension amounts
12 paid and the names and addresses of public employees retirement
13 association members or retirees requested for election purposes
14 by candidates for election to the retirement board may be
15 produced or disclosed without release or consent."

16 Section 7. Section 10-11-132 NMSA 1978 (being Laws 1987,
17 Chapter 253, Section 132, as amended) is amended to read:

18 "10-11-132. INVESTMENT OF FUNDS--PRUDENT INVESTOR
19 STANDARD--INDEMNIFICATION OF BOARD MEMBERS.--

20 A. The funds created by the state retirement system
21 acts are trust funds of which the retirement board is trustee.
22 Members of the retirement board jointly and individually shall
23 be indemnified by the state from the funds administered by the
24 retirement board from all claims, demands, suits, actions,
25 damages, judgments, costs, charges and expenses, including

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1 court costs and attorney fees and against all liability losses
2 and damages of any nature that members shall or may sustain by
3 reason of any decision made in the performance of their duties
4 pursuant to the state retirement system acts. The retirement
5 board shall invest and reinvest the funds in accordance with
6 the Uniform Prudent Investor Act.

7 B. The retirement board and any person providing
8 investment advice to the retirement board for a fee or other
9 compensation and all persons exercising discretionary authority
10 or control of funds under the management of the retirement
11 board are fiduciaries."

12 Section 8. Section 22-11-5 NMSA 1978 (being Laws 1967,
13 Chapter 16, Section 129) is amended to read:

14 "22-11-5. BOARD--RECORD--QUORUM--COMPENSATION.--

15 A. The board shall elect from its membership a
16 [~~chairman~~] chair and a vice [~~chairman~~] chair.

17 B. A record shall be taken and preserved of all
18 meetings of the board.

19 C. A quorum of the board shall be required for the
20 transaction of any business. A majority of the members of the
21 board [~~constitute~~] constitutes a quorum. Each member of the
22 board shall have one vote, and a proposal shall pass by the
23 affirmative vote of a majority of the members present at the
24 meeting.

25 D. While performing [~~their~~] the member's duties,

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1 each member of the board shall be entitled to receive per diem
2 and mileage as provided by the Per Diem and Mileage Act and
3 shall receive no other compensation, perquisite or allowance.

4 E. The board and any person providing investment
5 advice to the board for a fee or other compensation and all
6 persons exercising discretionary authority or control of funds
7 under the management of the board are fiduciaries."

8 Section 9. Section 22-11-6 NMSA 1978 (being Laws 1967,
9 Chapter 16, Section 130) is amended to read:

10 "22-11-6. BOARD--POWERS--DUTIES.--The board shall:

11 A. properly and uniformly enforce the Educational
12 Retirement Act;

13 B. hire employees and delegate administrative
14 authority to these employees;

15 C. make an actuarial report on the financial
16 operation of the Educational Retirement Act to the legislature
17 at each regular session every odd-numbered year;

18 D. accept donations, gifts or bequests; [~~and~~]

19 E. adopt regulations pursuant to the Educational
20 Retirement Act; and

21 F. select and contract for the services of one or
22 more custodian banks for all funds under the board's
23 management. For the purpose of this subsection, "custodian
24 bank" means a financial institution with the general fiduciary
25 duties to manage, control and collect the assets of an

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1 investment fund, including receiving all deposits and paying
2 all disbursements as directed by staff, safekeeping of assets,
3 coordination of asset transfers, timely settlement of
4 securities transactions and accurate and timely reporting of
5 the assets by individual account and in total."

6 Section 10. EFFECTIVE DATE.--The effective date of the
7 provisions of this act is July 1, 2010.

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