

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: CS/SB 269a

50th Legislature, 1st Session, 2011

Tracking Number: .185776.2

Short Title: Educational Retirement Board Bank & Attorneys

Sponsor(s): Senator John Sapien

Analyst: Craig J. Johnson

Date: March 15, 2011

AS AMENDED

The Senate Floor amendments add language:

- requiring the Attorney General to review proposed contracts within 30 days; and
- clarifying that the board's contracting for legal services shall not prejudice or impair a *qui tam* plaintiff's rights pursuant to the *Fraud Against Taxpayers Act*.

Original Bill Summary:

Among its provisions, CS/SB 269:

- amends the *Educational Retirement Act* to allow the New Mexico Educational Retirement Board (ERB) to contract for one or more custodial banks for the purpose of control and collection of ERB investment fund assets;
- allows ERB to contract for legal services, subject to the *Procurement Code*, on a contingency fee basis;
- requires the ERB to submit proposed contracts for legal services on a contingent fee basis to the Attorney General's office (AG) for review:
 - the AG's review will consider the complexity of the claims to be pursued under the contract; and
 - if the AG advises that the proposed contingency fee is not reasonable, the board can still approve the contract and associated fee if at least four of the seven members vote for approval;
- requires each prospective contractor to file a disclosure of campaign contributions as established in the *Procurement Code*;
- creates the Educational Retirement Suspense Fund; and
- provides that amounts received from the satisfaction of the claims brought by attorneys on behalf of the ERB shall be deposited into the Educational Retirement Suspense Fund.

Fiscal Issues:

The Department of Finance and Administration currently contracts for custodial bank services for the ERB.

CS/SB 269 would allow the ERB to directly contract with a custodial bank to manage, control, and collect the assets of the Educational Retirement Fund.

Substantive Issues:

The ERB analysis notes that:

- the Ennis/Knupp report, which analyzed state investment operations, recommended that ERB have the authority to directly contract with a custodial bank, rather than to have the Board of Finance (BOF) select a custodial bank;
- the ERB assets that will be managed under the contract are of sufficient size that ERB will be able to contract for the services on the same basis as the BOF;
- the ERB, as well as the Public Employees Retirement Association and the State Investment Council, also are seeking authority to contract for legal services on a contingent fee basis; and
- in some, but not all, investment-related litigation it is economical and fiscally prudent for ERB to pursue damages on a contingency fee basis rather than an hourly fee basis.

Related Bills:

SB 86a *Investment Council Legal Service Contracts*
HB 38a *PERA Custodian Bank & Attorney Fees*