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HOUSE BILL 548

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Donald E. Bratton

AN ACT

RELATING TO THE INVESTMENT OF PUBLIC MONEY; PROHIBITING CERTAIN
STATE INVESTMENTS OR CONTRACTS IF THE RECIPIENT OF THE
INVESTMENT OR THE CONTRACTOR IS REPRESENTED BY A THIRD-PARTY
SALES AGENT WHO IS COMPENSATED AS A RESULT OF THE INVESTMENT OR
CONTRACT AWARD; REQUIRING THE DISCLOSURE OF THIRD-PARTY SALES
AGENTS; REQUIRING A CERTAIN CERTIFICATION BY THIRD-PARTY SALES
AGENTS; PROVIDING A PENALTY.

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

SECTION 1. A new section of Chapter 6, Article 8 NMSA
1978 is enacted to read:

"~~[NEW MATERIAL]~~ THIRD-PARTY SALES AGENTS--CERTAIN
INVESTMENTS OR CONTRACTS PROHIBITED--DISCLOSURE REQUIRED--
PENALTY.--

A. The state investment office, the state

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1 investment officer or the council shall not make or continue an
2 investment or enter into or continue a contract if the
3 potential recipient of the investment or the potential
4 contractor is represented by a third-party sales agent and:

5 (1) the third-party sales agent was hired,
6 engaged or retained for the primary purpose of securing or
7 continuing the investment or contract from the state investment
8 office, the state investment officer or the council; or

9 (2) the compensation paid or agreed to be paid
10 to the third-party sales agent is contingent upon, or will be
11 increased as a result of, the securing or continuation of the
12 investment or the contract.

13 B. Upon the knowledge that an investment has been
14 made or continued in violation of Subsection A of this section,
15 the state investment office shall demand that the investment be
16 terminated. Upon the demand, the person securing the
17 investment shall terminate the investment and pay to the state
18 investment office the greater of:

19 (1) the current market value of the investment
20 plus all fees paid; or

21 (2) the amount of the original investment plus
22 interest compounded at a rate of the London interbank offered
23 rate plus five percent.

24 C. Upon the knowledge that a contract has been
25 entered into or continued in violation of Subsection A of this

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1 section, the state investment office shall demand that the
2 contract be terminated. Upon the demand, the contract shall be
3 terminated with no additional payments due and the contractor
4 shall return all money paid pursuant to the contract during the
5 preceding twenty-four months.

6 D. Upon the first contact with the state investment
7 office, the state investment officer or the council by a third-
8 party sales agent who represents a principal seeking to secure
9 or continue an investment or contract, the third-party sales
10 agent shall:

11 (1) disclose that the agent is a third-party
12 sales agent and shall also disclose the identity of the
13 principal seeking the investment or contract; and

14 (2) certify that:

15 (a) the agent was not hired, engaged or
16 retained for the primary purpose of securing or continuing the
17 investment or contract; and

18 (b) the agent's compensation from the
19 principal is not contingent upon, or will not be increased as a
20 result of, the securing or continuation of the investment or
21 the contract.

22 E. Any person who knowingly violates the disclosure
23 requirement of Subsection D of this section or falsely
24 certifies pursuant to that subsection is guilty of a fourth
25 degree felony and shall be punished by a fine of not more than

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1 twenty thousand dollars (\$20,000) or by imprisonment for a
2 definite term not to exceed eighteen months, or both.

3 F. As used in this section, "third-party sales
4 agent" means a person who:

5 (1) represents a principal seeking to secure
6 or continue an investment or contract with the state investment
7 office, the state investment officer or the council; and

8 (2) contacts the state investment office, the
9 state investment officer or the council on behalf of the
10 principal."

11 SECTION 2. A new section of Chapter 6, Article 10 NMSA
12 1978 is enacted to read:

13 "[NEW MATERIAL] THIRD-PARTY SALES AGENTS--CERTAIN
14 INVESTMENTS OR CONTRACTS PROHIBITED--DISCLOSURE REQUIRED--
15 PENALTY.--

16 A. Neither the state treasurer nor the state
17 treasurer's office shall make or continue an investment or
18 enter into or continue a contract if the potential recipient of
19 the investment or the potential contractor is represented by a
20 third-party sales agent and:

21 (1) the third-party sales agent was hired,
22 engaged or retained for the primary purpose of securing or
23 continuing the investment or contract from the state treasurer
24 or the state treasurer's office; or

25 (2) the compensation paid or agreed to be paid

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1 to the third-party sales agent is contingent upon, or will be
2 increased as a result of, the securing or continuation of the
3 investment or the contract.

4 B. Upon the knowledge that an investment has been
5 made or continued in violation of Subsection A of this section,
6 the state treasurer shall demand that the investment be
7 terminated. Upon the demand, the person securing the
8 investment shall terminate the investment and pay to the state
9 treasurer the greater of:

10 (1) the current market value of the investment
11 plus all fees paid; or

12 (2) the amount of the original investment plus
13 interest compounded at a rate of the London interbank offered
14 rate plus five percent.

15 C. Upon the knowledge that a contract has been
16 entered into or continued in violation of Subsection A of this
17 section, the state treasurer shall demand that the contract be
18 terminated. Upon the demand, the contract shall be terminated
19 with no additional payments due and the contractor shall return
20 all money paid pursuant to the contract during the preceding
21 twenty-four months.

22 D. Upon the first contact with the state treasurer
23 or the state treasurer's office by a third-party sales agent
24 who represents a principal seeking to secure or continue an
25 investment or contract, the third-party sales agent shall:

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1 (1) disclose that the agent is a third-party
2 sales agent and shall also disclose the identity of the
3 principal seeking the investment or contract; and

4 (2) certify that:

5 (a) the agent was not hired, engaged or
6 retained for the primary purpose of securing or continuing the
7 investment or contract; and

8 (b) the agent's compensation from the
9 principal is not contingent upon, or will not be increased as a
10 result of, the securing or continuation of the investment or
11 the contract.

12 E. Any person who knowingly violates the disclosure
13 requirement of Subsection D of this section or falsely
14 certifies pursuant to that subsection is guilty of a fourth
15 degree felony and shall be punished by a fine of not more than
16 twenty thousand dollars (\$20,000) or by imprisonment for a
17 definite term not to exceed eighteen months, or both.

18 F. As used in this section, "third-party sales
19 agent" means a person who:

20 (1) represents a principal seeking to secure
21 or continue an investment or contract with the state treasurer
22 or the state treasurer's office; and

23 (2) contacts the state treasurer or the state
24 treasurer's office on behalf of the principal."

25 SECTION 3. A new section of the Public Employees

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1 Retirement Act is enacted to read:

2 "[NEW MATERIAL] THIRD-PARTY SALES AGENTS--CERTAIN
3 INVESTMENTS OR CONTRACTS PROHIBITED--DISCLOSURE REQUIRED--
4 PENALTY.--

5 A. Neither the retirement board nor an employee of
6 the association shall make or continue an investment or enter
7 into or continue a contract if the potential recipient of the
8 investment or the potential contractor is represented by a
9 third-party sales agent and:

10 (1) the third-party sales agent was hired,
11 engaged or retained for the primary purpose of securing or
12 continuing the investment or contract from the retirement board
13 or an employee of the association; or

14 (2) the compensation paid or agreed to be paid
15 to the third-party sales agent is contingent upon, or will be
16 increased as a result of, the securing or continuation of the
17 investment or the contract.

18 B. Upon the knowledge that an investment has been
19 made or continued in violation of Subsection A of this section,
20 the retirement board shall demand that the investment be
21 terminated. Upon the demand, the person securing or retaining
22 the investment shall terminate the investment and pay to the
23 retirement board the greater of:

24 (1) the current market value of the investment
25 plus all fees paid; or

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1 (2) the amount of the original investment plus
2 interest compounded at a rate of the London interbank offered
3 rate plus five percent.

4 C. Upon the knowledge that a contract has been
5 entered into or continued in violation of Subsection A of this
6 section, the retirement board shall demand that the contract be
7 terminated. Upon the demand, the contract shall be terminated
8 with no additional payments due and the contractor shall return
9 all money paid pursuant to the contract during the preceding
10 twenty-four months.

11 D. Upon the first contact with the retirement
12 board, a board member or an employee of the association by a
13 third-party sales agent who represents a principal seeking to
14 secure or continue an investment or contract, the third-party
15 sales agent shall:

16 (1) disclose that the agent is a third-party
17 sales agent and shall also disclose the identity of the
18 principal seeking the investment or contract; and

19 (2) certify that:

20 (a) the agent was not hired, engaged or
21 retained for the primary purpose of securing or continuing the
22 investment or contract; and

23 (b) the agent's compensation from the
24 principal is not contingent upon, or will not be increased as a
25 result of, the securing or continuation of the investment or

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1 the contract.

2 E. Any person who knowingly violates the disclosure
3 requirement of Subsection D of this section or falsely
4 certifies pursuant to that subsection is guilty of a fourth
5 degree felony and shall be punished by a fine of not more than
6 twenty thousand dollars (\$20,000) or by imprisonment for a
7 definite term not to exceed eighteen months, or both.

8 F. As used in this section, "third-party sales
9 agent" means a person who:

10 (1) represents a principal seeking to secure
11 or continue an investment or contract with the retirement board
12 or an employee of the association; and

13 (2) contacts the retirement board or an
14 employee of the association on behalf of the principal."

15 SECTION 4. A new section of the Educational Retirement
16 Act is enacted to read:

17 "[NEW MATERIAL] THIRD-PARTY SALES AGENTS--CERTAIN
18 INVESTMENTS OR CONTRACTS PROHIBITED--DISCLOSURE REQUIRED--
19 PENALTY.--

20 A. Neither the board nor an employee of the board
21 shall make or continue an investment or enter into or continue
22 a contract if the potential recipient of the investment or the
23 potential contractor is represented by a third-party sales
24 agent and:

25 (1) the third-party sales agent was hired,

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1 engaged or retained for the primary purpose of securing or
2 continuing the investment or contract from the board or an
3 employee of the board; or

4 (2) the compensation paid or agreed to be paid
5 to the third-party sales agent is contingent upon, or will be
6 increased as a result of, the securing or continuation of the
7 investment or the contract.

8 B. Upon the knowledge that an investment has been
9 made or continued in violation of Subsection A of this section,
10 the board shall demand that the investment be terminated. Upon
11 the demand, the person securing the investment shall terminate
12 the investment and pay to the board the greater of:

13 (1) the current market value of the investment
14 plus all fees paid; or

15 (2) the amount of the original investment plus
16 interest compounded at a rate of the London interbank offered
17 rate plus five percent.

18 C. Upon the knowledge that a contract has been
19 entered into or continued in violation of Subsection A of this
20 section, the board shall demand that the contract be
21 terminated. Upon the demand, the contract shall be terminated
22 with no additional payments due and the contractor shall return
23 all money paid pursuant to the contract during the preceding
24 twenty-four months.

25 D. Upon the first contact with the board, a board

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1 member or an employee of the board by a third-party sales agent
2 who represents a principal seeking to secure or retain an
3 investment or contract, the third-party sales agent shall:

4 (1) disclose that the agent is a third-party
5 sales agent and shall also disclose the identity of the
6 principal seeking the investment or contract; and

7 (2) certify that:

8 (a) the agent was not hired, engaged or
9 retained for the primary purpose of securing or continuing the
10 investment or contract; and

11 (b) the agent's compensation from the
12 principal is not contingent upon, or will not be increased as a
13 result of, the securing or continuation of the investment or
14 the contract.

15 E. Any person who knowingly violates the disclosure
16 requirement of Subsection D of this section or falsely
17 certifies pursuant to that subsection is guilty of a fourth
18 degree felony and shall be punished by a fine of not more than
19 twenty thousand dollars (\$20,000) or by imprisonment for a
20 definite term not to exceed eighteen months, or both.

21 F. As used in this section, "third-party sales
22 agent" means a person who:

23 (1) represents a principal seeking to secure
24 or continue an investment or contract with the board or an
25 employee of the board; and

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1 (2) contacts the board, a board member or an
2 employee of the board on behalf of the principal."

3 SECTION 5. REPEAL.--Sections 6-8-22, 10-11-133.1 and
4 22-11-54 NMSA 1978 (being Laws 2009, Chapter 152, Sections 1
5 through 3) are repealed.

6 SECTION 6. APPLICABILITY.--The provisions of this act
7 apply to investments initially made or contracts initially
8 entered into on or after July 1, 2011.

9 SECTION 7. EFFECTIVE DATE.--The effective date of the
10 provisions of this act is July 1, 2011.

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