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SENATE BILL 82

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

INTRODUCED BY

John M. Sapien

ENDORSED BY THE INVESTMENTS OVERSIGHT COMMITTEE

AN ACT

RELATING TO THE STATE INVESTMENT OFFICER; REMOVING THE STATE INVESTMENT OFFICER FROM MEMBERSHIP ON BOARDS OF THE NEW MEXICO FINANCE AUTHORITY, THE SMALL BUSINESS INVESTMENT CORPORATION AND THE NEW MEXICO RENEWABLE ENERGY TRANSMISSION AUTHORITY AND FROM THE EDUCATION TRUST BOARD.

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

SECTION 1. Section 6-21-4 NMSA 1978 (being Laws 1992, Chapter 61, Section 4, as amended) is amended to read:

"6-21-4. NEW MEXICO FINANCE AUTHORITY CREATED-- MEMBERSHIP--QUALIFICATIONS--QUORUM--MEETINGS--COMPENSATION-- BOND.--

A. There is created a public body politic and corporate, separate and apart from the state, constituting a governmental instrumentality to be known as the "New Mexico

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1 finance authority" for the performance of essential public
2 functions.

3 B. The authority shall be composed of [~~twelve~~
4 eleven] members. The [~~state investment officer, the~~] secretary
5 of finance and administration, the secretary of economic
6 development, the secretary of energy, minerals and natural
7 resources, the secretary of environment, the executive director
8 of the New Mexico municipal league and the executive director
9 of the New Mexico association of counties or their designees
10 shall be ex-officio members of the authority with voting
11 privileges. The governor, with the advice and consent of the
12 senate, shall appoint to the authority the chief financial
13 officer of a state higher educational institution and four
14 members who are residents of the state. The appointed members
15 shall serve at the pleasure of the governor.

16 C. The appointed members of the authority shall be
17 appointed to four-year terms. The initial members shall be
18 appointed to staggered terms of four years or less, so that the
19 term of at least one member expires on January 1 of each year.
20 Vacancies shall be filled by appointment by the governor for
21 the remainder of the unexpired term. Any member of the
22 authority shall be eligible for reappointment.

23 D. Each appointed member before entering upon [~~his~~]
24 the member's duty shall take an oath of office to administer
25 the duties of [~~his~~] the member's office faithfully and

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1 impartially. A record of the oath shall be filed in the office
2 of the secretary of state.

3 E. The governor shall designate an appointed member
4 of the authority to serve as [~~chairman~~] chair. The authority
5 shall elect annually one of its members to serve as vice
6 [~~chairman~~] chair. The authority shall appoint and prescribe
7 the duties of such other officers, who need not be members, as
8 the authority deems necessary or advisable, including chief
9 executive officer and a secretary, who may be the same person.
10 The authority may delegate to one or more of its members,
11 officers, employees or agents such powers and duties as it may
12 deem proper and consistent with the New Mexico Finance
13 Authority Act.

14 F. The chief executive officer of the authority
15 shall direct the affairs and business of the authority, subject
16 to the policies, control and direction of the authority. The
17 secretary of the authority shall keep a record of the
18 proceedings of the authority and shall be custodian of all
19 books, documents and papers filed with the authority, the
20 minute book or journal of the authority and its official seal.
21 The secretary shall make copies of all minutes and other
22 records and documents of the authority and give certificates
23 under the official seal of the authority to the effect that the
24 copies are true copies, and all persons dealing with the
25 authority may rely upon the certificates.

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1 G. Meetings of the authority shall be held at the
2 call of the [~~chairman~~] chair or whenever three members shall so
3 request in writing. A majority of members then serving
4 constitutes a quorum for the transaction of any business. The
5 affirmative vote of at least a majority of a quorum present
6 shall be necessary for any action to be taken by the authority.
7 An ex-officio member may designate in writing another person to
8 attend meetings of the authority and to the same extent and
9 with the same effect act in [~~his~~] the ex-officio member's
10 stead. No vacancy in the membership of the authority shall
11 impair the right of a quorum to exercise all rights and perform
12 all duties of the authority.

13 H. Each member of the authority shall give bond as
14 provided in the Surety Bond Act. All costs of the surety bonds
15 shall be borne by the authority.

16 I. The authority is not created or organized, and
17 its operations shall not be conducted, for the purpose of
18 making a profit. No part of the revenues or assets of the
19 authority shall benefit or be distributable to its members,
20 officers or other private persons. The members of the
21 authority shall receive no compensation for their services, but
22 shall be reimbursed for actual and necessary expenses at the
23 same rate and on the same basis as provided for public officers
24 in the Per Diem and Mileage Act.

25 J. The authority shall not be subject to the

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1 supervision or control of any other board, bureau, department
2 or agency of the state except as specifically provided in the
3 New Mexico Finance Authority Act. No use of the terms "state
4 agency" or "instrumentality" in any other law of the state
5 shall be deemed to refer to the authority unless the authority
6 is specifically referred to in the law.

7 K. The authority is a governmental instrumentality
8 for purposes of the Tort Claims Act."

9 SECTION 2. Section 21-21K-4 NMSA 1978 (being Laws 1997,
10 Chapter 259, Section 4) is amended to read:

11 "21-21K-4. BOARD CREATED--MEMBERS--APPOINTMENT--TERMS OF
12 OFFICE--POWERS AND DUTIES.--

13 A. There is created the "education trust board".
14 The board is administratively attached to the [commission]
15 higher education department, and the [commission] department
16 shall provide administrative support for the board in carrying
17 out its duties pursuant to the Education Trust Act. The board
18 shall consist of the following voting members:

19 (1) the [~~executive director of the commission~~
20 ~~or his~~] secretary of higher education or the secretary's
21 designee, who shall be the ex-officio chair of the board;

22 [~~(2) the state investment officer or his~~
23 ~~designee;~~

24 ~~(3)~~ (2) one member appointed by the governor;

25 [~~(4)~~] (3) one member representing institutions

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1 of higher education, appointed by the speaker of the house of
2 representatives; and

3 [~~(5)~~] (4) one member representing students at
4 institutions of higher education, appointed by the president
5 pro tempore of the senate.

6 B. The appointed members must possess knowledge,
7 skill and experience in higher education, business or finance.

8 C. The appointed members shall serve six-year
9 terms, with the exception of the member representing students,
10 who shall be appointed for a two-year term. Vacancies on the
11 board shall be filled by the respective appointing authority
12 for the remainder of the vacating member's term.

13 D. Members of the board shall be subject to the
14 provisions of the Per Diem and Mileage Act and shall receive no
15 other compensation, perquisite or allowance for their service
16 on the board.

17 E. The board is authorized to adopt and promulgate
18 rules and regulations as necessary to carry out the provisions
19 of the Education Trust Act, protect the financial integrity of
20 the fund, preserve the program's benefits and [~~assure~~] ensure
21 the appropriate use of the tax benefits. The board shall also
22 determine and adopt by regulation the cost of attendance at
23 institutions of higher education; provided that the cost of
24 attendance shall include the same components and allowances as
25 are used to determine cost of attendance for the federal

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1 student financial assistance programs."

2 SECTION 3. Section 58-29-5 NMSA 1978 (being Laws 2000,
3 Chapter 97, Section 7, as amended) is amended to read:

4 "58-29-5. CORPORATION BOARD OF DIRECTORS--APPOINTMENT--
5 POWERS.--

6 A. The corporation shall be governed by the board.
7 The corporation's board of directors shall consist of:

8 (1) the state treasurer or [~~his~~] the state
9 treasurer's designee; and

10 [~~(2) the state investment officer or his~~
11 ~~designee;~~

12 ~~(3)]~~ (2) six members appointed by the
13 governor.

14 B. Each director shall hold office for the length
15 of [~~his~~] the director's term in office or until a successor is
16 appointed or elected and begins service on the board.

17 C. The governor shall appoint, with the consent of
18 the senate, the six public directors of the board who shall
19 serve at the pleasure of the governor.

20 D. The governor's appointees to the board shall be
21 public members who have general expertise in small business
22 management, but they shall not be employed by or represent
23 small businesses receiving equity investments from the
24 corporation.

25 E. No two members of the board shall be employed by

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1 or represent the same company or institution.

2 F. The board shall annually elect a [~~chairman~~]
3 chair from among its members and shall elect those other
4 officers it determines necessary for the performance of its
5 duties.

6 G. The power to set the policies and procedures for
7 the corporation is vested in the board. The board may perform
8 all acts necessary or appropriate to exercise that power.

9 H. Public members of the board shall be reimbursed
10 for attending meetings of the board as provided in the Per Diem
11 and Mileage Act and shall receive no other compensation,
12 perquisite or allowance.

13 I. Public members of the board are appointed public
14 officials of the state while carrying out their duties and
15 activities under the Small Business Investment Act. The
16 directors and the employees of the corporation are not liable
17 personally, either jointly or severally, for any debt or
18 obligation created or incurred by the corporation or for any
19 act performed or obligation entered into in an official
20 capacity when done in good faith, without intent to defraud and
21 in connection with the administration, management or conduct of
22 the corporation or affairs relating to it.

23 J. The board shall conduct an annual audit of the
24 books of accounts, funds and securities of the corporation to
25 be made by a competent and independent firm of certified public

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1 accountants. A copy of the audit report shall be filed with
2 the president. The audit shall be open to the public for
3 inspection."

4 SECTION 4. Section 62-16A-3 NMSA 1978 (being Laws 2007,
5 Chapter 3, Section 3) is amended to read:

6 "62-16A-3. NEW MEXICO RENEWABLE ENERGY TRANSMISSION
7 AUTHORITY CREATED--ORGANIZATION.--

8 A. The "New Mexico renewable energy transmission
9 authority" is created as a public body, politic and corporate,
10 separate and apart from the state, constituting a governmental
11 instrumentality for the performance of essential public
12 functions.

13 B. The authority shall be composed of [~~seven~~] six
14 members as follows:

15 (1) three members appointed by the governor
16 with the advice and consent of the senate. The initial
17 appointees shall be appointed for staggered terms of one, two
18 and three years; thereafter, the members shall be appointed for
19 three-year terms;

20 [~~(2) the state investment officer or the state
21 investment officer's designee;~~

22 ~~(3)] (2) the state treasurer or the state
23 treasurer's designee;~~

24 [~~(4)] (3) one member appointed by the speaker
25 of the house of representatives who shall serve at the pleasure~~

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1 of the speaker of the house; and

2 [~~(5)~~] (4) one member appointed by the
3 president pro tempore of the senate who shall serve at the
4 pleasure of the president pro tempore.

5 C. The qualifications of the members shall be as
6 follows:

7 (1) one member appointed by the governor shall
8 have expertise in financial matters involving the financing of
9 major electrical transmission projects;

10 (2) the other four appointed members shall
11 have:

12 (a) special knowledge of the public
13 utility industry, as evidenced by college degrees or by
14 experience, at least five years of which must be with the
15 public utility industry; and

16 (b) knowledge of renewable energy
17 development; and

18 (3) no member shall represent a person that
19 owns or operates facilities.

20 D. The members initially appointed by the speaker
21 of the house and the president pro tempore of the senate shall,
22 by lot, determine one to have an initial term of two years and
23 one to have an initial term of four years; thereafter, the
24 appointments will be for staggered terms of four years.

25 E. In addition to the seven voting members, the

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1 secretary of energy, minerals and natural resources shall serve
2 as an ex-officio nonvoting member of the authority.

3 F. The governor shall designate an appointed member
4 of the authority to serve as chair, and the authority may elect
5 annually such other officers as it deems necessary.

6 G. The authority shall meet at the call of the
7 chair or whenever four members shall so request in writing. A
8 majority of members then serving constitutes a quorum for the
9 transaction of business, but the affirmative vote of at least
10 four members is necessary for any action to be taken by the
11 authority.

12 H. The authority is not created or organized, and
13 its operations are not conducted, for the purpose of making a
14 profit, but it is expected to recover the costs of operating
15 the authority. No part of the revenues or assets of the
16 authority shall benefit or be distributable to its members,
17 officers or other private persons. The members of the
18 authority shall receive no compensation for their services, but
19 the public members shall be reimbursed for actual and necessary
20 expenses at the same rate and on the same basis as provided for
21 public officers in the Per Diem and Mileage Act.

22 I. The authority is not subject to the supervision
23 or control of any other board, bureau, department or agency of
24 the state except as specifically provided in the New Mexico
25 Renewable Energy Transmission Authority Act. No use of the

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1 terms "state agency" or "instrumentality" in any other law of
2 the state shall be deemed to refer to the authority unless the
3 authority is specifically referred to in the law.

4 J. The authority is a governmental instrumentality
5 for purposes of the Tort Claims Act."

6 SECTION 5. EFFECTIVE DATE.--The effective date of the
7 provisions of this act is July 1, 2011.

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