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AN ACT

RELATING TO PUBLIC FINANCES; AUTHORIZING THE STATE INVESTMENT COUNCIL TO CONTRACT FOR LEGAL SERVICES ON A CONTINGENT FEE BASIS; CREATING A FUND; DECLARING AN EMERGENCY.

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 THE STATE INVESTMENT COUNCIL AND STATE INVESTMENT OFFICER--INVESTMENT POLICY-- INVESTMENT MANAGERS.--

A. Subject to the limitations, conditions and restrictions contained in policymaking regulations or resolutions adopted by the council, the council may make purchases, sales, exchanges, investments and reinvestments of the assets of all funds in accordance with the Uniform Prudent Investor Act. The state investment officer and the council are trustees of all funds under their control and shall see that money invested is at all times handled in the best interests of the state. The council may delegate administrative functions to the state investment officer.

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

1 upon the methods, practices or procedures for investment,
2 reinvestment, purchase, sale or exchange transactions that
3 should govern the activities of the investment office.

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

21 D. The council shall provide an opportunity for
22 public comment at meetings of the council. Advance notice of
23 meetings shall be published on the council's web site and in
24 a newspaper of general circulation at least ten days in
25 advance of the meeting.

1 E. All funds managed by the state investment
2 officer shall be managed in accordance with the Uniform
3 Prudent Investor Act. The council may employ investment
4 management services to invest the funds and may pay
5 reasonable compensation for investment management services
6 from the assets of the applicable funds, subject to budgeting
7 and appropriation by the legislature.

8 F. The council, the state investment officer, any
9 person providing investment advice to the council or state
10 investment officer for a fee or other compensation and all
11 persons exercising discretionary authority or control of
12 funds under the management of the council are fiduciaries.

13 G. The council may contract for legal services for
14 litigation on a contingent or partly contingent fee basis,
15 subject to an expedited solicitation process devised and
16 approved by the council; provided that:

17 (1) amounts recovered by the legal services
18 contractor shall be deposited in the state investment council
19 suspense fund;

20 (2) the council shall submit each proposed
21 contract to the attorney general and the department for
22 review of the contingency fee. The attorney general's and
23 the department's review shall take into account the
24 complexity of the factual and legal issues presented by the
25 claims to be pursued under the contract. If the attorney

1 general or the department advises the council that the
2 proposed contingency fee is not reasonable, the council may
3 nevertheless approve the contract and the contingency fee by
4 a majority vote of its members; and

5 (3) each prospective legal services
6 contractor seeking to represent the council on a contingent
7 or partly contingent fee basis shall file with the council
8 the disclosure required by Section 13-1-191.1 NMSA 1978
9 disclosing all campaign contributions made to the governor,
10 attorney general, state treasurer or any member of the
11 council, or to a political committee that is intended to aid
12 or promote the nomination or election of any candidate to a
13 state office if the committee is:

14 (a) established by any of the foregoing
15 persons or their agents;

16 (b) established in consultation with or
17 at the request of any of the foregoing persons or their
18 agents; or

19 (c) controlled by one of the foregoing
20 persons or their agents.

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

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

7 I. For funds available for investment for more
8 than one year, the council may contract with any state agency
9 to provide investment advisory or investment management
10 services, separately or through a pooled investment fund,
11 provided the state agency enters into a joint powers
12 agreement with the council and that state agency pays at
13 least the direct cost of such services. Notwithstanding any
14 statutory provision governing state agency investments, the
15 council may invest funds available from a state agency
16 pursuant to a joint powers agreement in any type of
17 investment permitted for the land grant permanent funds under
18 the prudent investor rule. In performing investment services
19 for a state agency, the council and the state investment
20 officer are exempt from the New Mexico Uniform Securities
21 Act. As used in this subsection, "state agency" means any
22 branch, agency, department, board, instrumentality,
23 institution or political subdivision of the state, the New
24 Mexico finance authority, the New Mexico mortgage finance
25 authority and any tax-exempt private endowment entity whose

1 sole beneficiary is a state agency.

2 J. The state investment officer shall provide
3 quarterly performance reports to the legislative finance
4 committee. Annually, the state investment officer shall
5 ratify and provide written investment policies, including any
6 amendments, to the legislative finance committee."

7 SECTION 2. A new section of Chapter 6, Article 8 NMSA
8 1978 is enacted to read:

9 "COMPENSATION UNDER CONTINGENT FEE CONTRACTS--SUSPENSE
10 FUND CREATED.--

11 A. For the purpose of making disbursements and
12 distributions pursuant to this section, the "state investment
13 council suspense fund" is created in the state treasury.

14 B. When pursuing a claim and utilizing legal
15 services on a contingent fee basis, all amounts received by
16 the legal services contractor as satisfaction of the claim
17 shall be transferred to the council and deposited into the
18 state investment council suspense fund to the credit of the
19 council. Upon the direction of the state investment officer,
20 the contingent attorney fees due to the legal services
21 contractor shall be disbursed from the suspense fund to the
22 contractor.

23 C. After a disbursement to a contractor pursuant
24 to Subsection B of this section, the balance of the deposit
25 into the state investment council suspense fund shall be

1 distributed to the appropriate permanent fund or other
2 appropriate fund from which the loss occurred that originated
3 the claim pursued by the legal services contractor."

4 **SECTION 3.** A new section of Chapter 6, Article 8 NMSA
5 1978 is enacted to read:

6 "QUI TAM PLAINTIFFS.--Nothing in this 2011 act shall
7 prejudice or impair the rights of a qui tam plaintiff
8 pursuant to the Fraud Against Taxpayers Act."

9 **SECTION 4. EMERGENCY.**--It is necessary for the public
10 peace, health and safety that this act take effect
11 immediately. _____

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