_____ JOINT RESOLUTION

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

INTRODUCED BY

DISCUSSION DRAFT

A JOINT RESOLUTION

PROPOSING TO AMEND ARTICLE 12, SECTION 7 AND ARTICLE 16, SECTION 6 OF THE CONSTITUTION OF NEW MEXICO TO PRESERVE THE LAND GRANT PERMANENT FUNDS AND THE WATER TRUST FUND BY INCREASING THE DUTY OF CARE AND CHANGING THE LIMITATIONS ON INVESTMENT.

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

SECTION 1. It is proposed to amend Article 12, Section 7 of the constitution of New Mexico to read:

"A. As used in this section, "fund" means the permanent school fund described in <u>Article 12</u>, Section 2 of this [~~article~~] <u>constitution</u> and all other permanent funds derived from lands granted or confirmed to the state by the act of congress of June 20, 1910, entitled "An act to enable the people of New Mexico to form a constitution and state

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government and be admitted into the union on an equal footing with the original states.".

B. The fund shall be invested by the state investment officer in accordance with policy regulations promulgated by the state investment council.

C. In making investments, the state investment officer, under the supervision of the state investment council, shall [~~exercise the judgment and care under the circumstances then prevailing that businessmen of ordinary prudence, discretion and intelligence exercise in the management of their own affairs not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital~~] <u>invest and manage the fund in accordance with the Uniform Prudent Investor Act</u>.

D. The legislature may establish criteria for investing the fund if the criteria are enacted by a three-fourths' vote of the members elected to each house, but investment of the fund is subject to the following restrictions:

(1) not more than sixty-five percent of the book value of the fund shall be invested at any given time in corporate stocks;

(2) not more than ten percent of the voting stock of a corporation shall be held;

(3) stocks eligible for purchase shall be restricted to those stocks of businesses listed upon a national stock exchange or included in a nationally recognized list of stocks; and

(4) not more than [~~fifteen~~] twenty-five percent of the book value of the fund may be invested in international securities at any single time.

E. All additions to the fund and all earnings, including interest, dividends and capital gains from investment of the fund shall be credited to the fund.

F. Except as provided in Subsection G of this section, the annual distributions from the fund shall be five percent of the average of the year-end market values of the fund for the immediately preceding five calendar years.

G. In addition to the annual distribution made pursuant to Subsection F of this section, unless suspended pursuant to Subsection H of this section, an additional annual distribution shall be made pursuant to the following schedule; provided that no distribution shall be made pursuant to the provisions of this subsection in any fiscal year if the average of the year-end market values of the fund for the immediately preceding five calendar years is less than five billion eight hundred million dollars ($5,800,000,000):

(1) in fiscal years 2005 through 2012, an amount equal to eight-tenths percent of the average of the

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year-end market values of the fund for the immediately preceding five calendar years; provided that any additional distribution from the permanent school fund pursuant to this paragraph shall be used to implement and maintain educational reforms as provided by law; and

(2) in fiscal years 2013 through 2016, an amount equal to one-half percent of the average of the year-end market values of the fund for the immediately preceding five calendar years; provided that any additional distribution from the permanent school fund pursuant to this paragraph shall be used to implement and maintain educational reforms as provided by law.

H. The legislature, by a three-fifths' vote of the members elected to each house, may suspend any additional distribution provided for in Subsection G of this section."

SECTION 2. It is proposed to amend Article 16, Section 6 of the constitution of New Mexico to read:

"A. The "water trust fund" is created in the state treasury to conserve and protect the water resources of New Mexico and to ensure that New Mexico has the water it needs for a strong and vibrant future. The purpose of the fund shall be to secure a supply of clean and safe water for New Mexico's residents. The fund shall consist of money appropriated, donated or otherwise accrued to the fund. Money in the fund shall be invested by the state investment officer [~~as land~~

~~grant permanent funds are invested~~] <u>in accordance with the limitations in Article 12, Section 7 of the constitution of New Mexico</u>, and there shall be strict accountability and oversight measures as provided by the state investment council to ensure appropriate safety of and return on investments. Earnings from investment of the fund shall be credited to the fund. Money in the fund shall not revert or be expended for any purpose, but an annual distribution shall be made to the water project fund, which shall be used only to support critically needed projects that preserve and protect New Mexico's water supply and is in accordance with Subsection B of this section.

B. On July 1, 2008 and each fiscal year thereafter, an annual distribution shall be made from the water trust fund pursuant to law, and that distribution shall then be appropriated by the legislature only for water projects consistent with a state water plan and as otherwise provided by law."

SECTION 3. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date that may be called for that purpose.