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SENATE BILL

**50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO PUBLIC FINANCES; INCREASING THE PERCENTAGE OF THE SEVERANCE TAX PERMANENT FUND ALLOCATED TO THE SMALL BUSINESS INVESTMENT CORPORATION FOR INVESTMENT; REQUIRING THAT THE SMALL BUSINESS INVESTMENT CORPORATION COMMIT FUNDS WITHIN THREE YEARS; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2007.

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

**SECTION 1.** Section 7-27-5.15 NMSA 1978 (being Laws 1990, Chapter 126, Section 5, as amended by Laws 2007, Chapter 355, Section 1 and by Laws 2007, Chapter 359, Section 1 and also by Laws 2007, Chapter 360, Section 1) is amended to read:

"7-27-5.15. NEW MEXICO PRIVATE EQUITY FUNDS AND BUSINESS INVESTMENTS.--

A. No more than [~~nine~~] ten percent of the market

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1 value of the severance tax permanent fund may be invested in  
2 New Mexico private equity funds or New Mexico businesses under  
3 this section.

4 B. In making investments pursuant to Subsection A  
5 of this section, the council shall make investments in New  
6 Mexico private equity funds or New Mexico businesses whose  
7 investments or enterprises enhance the economic development  
8 objectives of the state.

9 C. The state investment officer shall make  
10 investments pursuant to Subsection A of this section only upon  
11 approval of the council, upon review of the recommendation of  
12 the private equity investment advisory committee and within  
13 guidelines and policies established by the council.

14 D. As used in this section:

15 (1) "New Mexico business" means, in the case  
16 of a corporation or limited liability company, a business with  
17 its principal office and a majority of its full-time employees  
18 located in New Mexico or, in the case of a limited partnership,  
19 a business with its principal place of business and eighty  
20 percent of its assets located in New Mexico; and

21 (2) "New Mexico private equity fund" means a  
22 limited partnership, limited liability company or corporation  
23 organized and operating in the United States and maintaining an  
24 office staffed by a full-time investment officer in New Mexico  
25 that:

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1 (a) has as its primary business activity  
2 the investment of funds in return for equity in or debt of  
3 businesses for the purpose of providing capital for start-up,  
4 expansion, product or market development, recapitalization or  
5 similar business purposes;

6 (b) holds out the prospects for capital  
7 appreciation from such investments;

8 (c) has at least one full-time manager  
9 with at least three years of professional experience in  
10 assessing the growth prospects of businesses or evaluating  
11 business plans and who has established permanent residency in  
12 the state;

13 (d) is committed to investing or helps  
14 secure investing by others, in an amount at least equal to the  
15 total investment made by the state investment officer in that  
16 fund pursuant to this section, in businesses with a principal  
17 place of business in the state and that hold promise for  
18 attracting additional capital from individual or institutional  
19 investors nationwide for businesses in the state; and

20 (e) accepts investments only from  
21 accredited investors as that term is defined in Section 2 of  
22 the federal Securities Act of 1933, as amended (15 USCA Section  
23 77(b)), and rules and regulations promulgated pursuant to that  
24 section, or federally recognized Indian tribes, nations and  
25 pueblos with at least five million dollars (\$5,000,000) in

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1 overall investment assets.

2 E. The state investment officer is authorized to  
3 make investments in New Mexico businesses to create new job  
4 opportunities and to support new, emerging or expanding  
5 businesses in a manner consistent with the constitution of New  
6 Mexico if:

7 (1) the investments are made:

8 (a) in conjunction with cooperative  
9 investment agreements with parties that have demonstrated  
10 abilities and relationships in making investments in new,  
11 emerging or expanding businesses; or

12 (b) in New Mexico aerospace businesses  
13 that have received an award from the United States government  
14 or one of its agencies or instrumentalities: 1) in an amount,  
15 not less than one hundred million dollars (\$100,000,000), that  
16 is equal to at least ten times the investment from the  
17 severance tax permanent fund; and 2) for the purpose of  
18 stimulating commercial enterprises;

19 (2) an investment in any one business does not  
20 exceed ten percent of the amount available for investment  
21 pursuant to this section; and

22 (3) the investments represent no more than  
23 fifty-one percent of the total investment capital in a  
24 business; provided, however, that nothing in this subsection  
25 prohibits the ownership of more than fifty-one percent of the

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1 total investment capital in a New Mexico business if the  
2 additional ownership interest:

3 (a) is due to foreclosure or other  
4 action by the state investment officer pursuant to agreements  
5 with the business or other investors in that business;

6 (b) is necessary to protect the  
7 investment; and

8 (c) does not require an additional  
9 investment of the severance tax permanent fund.

10 F. The state investment officer shall make a  
11 commitment to the small business investment corporation  
12 pursuant to the Small Business Investment Act to invest [~~one~~]  
13 two percent of the market value of the severance tax permanent  
14 fund to create new job opportunities by providing capital for  
15 land, buildings or infrastructure for facilities to support new  
16 or expanding businesses and to otherwise make investments to  
17 create new job opportunities to support new or expanding  
18 businesses in a manner consistent with the constitution of New  
19 Mexico. On July 1 of each year, the state investment officer  
20 shall determine whether the invested capital in the small  
21 business investment corporation is less than [~~one~~] two percent  
22 of the market value of the severance tax permanent fund. If  
23 the invested capital in the small business investment  
24 corporation equals less than [~~one~~] two percent of the market  
25 value of the severance tax permanent fund, further commitments

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1 shall be made until the invested capital is equal to ~~[one]~~ two  
2 percent of the market value of the fund.

3 G. The state investment officer shall report  
4 semiannually on the New Mexico private equity investments made  
5 pursuant to this section. Annually, a report shall be  
6 submitted to the legislature prior to the beginning of each  
7 regular legislative session and a second report no later than  
8 October 1 each year to the legislative finance committee, the  
9 revenue stabilization and tax policy committee and any other  
10 appropriate interim committee. Each report shall provide the  
11 amounts invested in each New Mexico private equity fund, as  
12 well as information about the objectives of the funds, the  
13 companies in which each fund is invested and how each  
14 investment enhances the economic development objectives of  
15 the state. Each report shall provide the amounts invested in  
16 each New Mexico business."

17 SECTION 2. Section 58-29-7 NMSA 1978 (being Laws 2003,  
18 Chapter 399, Section 10) is amended to read:

19 "58-29-7. RETURN TO SEVERANCE TAX PERMANENT FUND.--

20 A. Annually, no later than thirty days after the  
21 delivery of its annual report to the governor and the  
22 legislative finance committee, the corporation shall return  
23 to the severance tax permanent fund an amount equal to the  
24 net excess of funds held by the corporation. For purposes of  
25 this section, "net excess of funds" means the return on

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1 investments to the corporation in the amount of dividends and  
2 interest actually received plus any capital gains actually  
3 realized, less the operating expenses of the corporation and  
4 less amounts reasonably reserved for losses.

5 B. Money allocated to the corporation for  
6 investment that is not committed within three years of the  
7 allocation shall revert to the severance tax permanent fund."

8 SECTION 3. EFFECTIVE DATE.--The effective date of the  
9 provisions of this act is July 1, 2012.

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SENATE BILL

**50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO PUBLIC FINANCES; CHANGING THE MEMBERSHIP, POWERS AND DUTIES OF THE STATE INVESTMENT COUNCIL; PROVIDING FOR THE ELECTION OF THE CHAIR AND VICE CHAIR OF THE COUNCIL; EXTENDING REPORTING DEADLINES.

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

**SECTION 1.** Section 6-8-2 NMSA 1978 (being Laws 1957, Chapter 179, Section 2, as amended) is amended to read:

"6-8-2. STATE INVESTMENT COUNCIL.--

A. There is created a "state investment council".

The council shall be composed of:

- (1) the ~~governor~~ secretary;
- (2) a member appointed by the state treasurer;
- (3) a member appointed by the commissioner of

public lands;

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1                    [~~(4)~~ ~~the secretary;~~

2                    ~~(5) the chief financial officer of a state~~  
3 ~~institution of higher education appointed by the governor with~~  
4 ~~the advice and consent of the senate;~~

5                    ~~(6) four members appointed by the New Mexico~~  
6 ~~legislative council with the advice and consent of the senate;~~  
7 ~~provided that no more than two members shall be members of the~~  
8 ~~same political party;]~~

9                    (4) one public member appointed by the  
10 president pro tempore of the senate with the advice and consent  
11 of the senate;

12                    (5) one public member appointed by the  
13 minority floor leader of the senate with the advice and consent  
14 of the senate;

15                    (6) one public member appointed by the speaker  
16 of the house of representatives with the advice and consent of  
17 the senate;

18                    (7) one public member appointed by the  
19 minority floor leader of the house of representatives with the  
20 advice and consent of the senate; and

21                    [~~(7) two~~] (8) four members appointed by the  
22 governor with the advice and consent of the senate.

23                    B. No more than two members of the council  
24 appointed pursuant to Paragraph (8) of Subsection A of this  
25 section shall be members of the same political party.

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1           ~~[B.]~~ C. The chair ~~[of the council shall be the~~  
2 ~~governor]~~ and the vice chair of the council shall be selected  
3 by the council from among the members appointed pursuant to  
4 Paragraphs (2) through (8) of Subsection A of this section for  
5 terms of two years, provided that the chair and the vice chair  
6 shall serve staggered terms and shall serve no more than two  
7 consecutive terms and the vice chair elected in 2012 shall  
8 serve a one-year term to allow for staggered terms.

9           D. All actions of the council shall be by majority  
10 vote, and a majority of the members shall constitute a quorum.

11           ~~[E.]~~ E. Members of the council appointed pursuant  
12 to Paragraphs ~~[(6) and (7)]~~ (2) through (8) of Subsection A of  
13 this section shall be reimbursed per diem and mileage pursuant  
14 to the provisions of the Per Diem and Mileage Act."

15           **SECTION 2.** Section 6-8-3 NMSA 1978 (being Laws 1957,  
16 Chapter 179, Section 3, as amended) is amended to read:

17           "6-8-3. COUNCIL TERMS AND QUALIFICATIONS.--

18           A. Members of the council appointed pursuant to  
19 Paragraphs ~~[(6) and (7)]~~ (2) through (8) of Subsection A of  
20 Section 6-8-2 NMSA 1978, with the advice and consent of the  
21 senate, shall serve for staggered terms of five years. Members  
22 of the council shall serve until their successors are appointed  
23 and have qualified.

24           B. The members of the council appointed pursuant to  
25 Paragraphs ~~[(6) and (7)]~~ (2) through (8) of Subsection A of

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1 Section 6-8-2 NMSA 1978 shall be qualified by competence and no  
2 less than ten years experience in the field of investment or  
3 finance. A member of the council shall not have had any  
4 contracts to do business with the state investment council, the  
5 investment office, the office of the state treasurer, the  
6 educational retirement board, the public employees retirement  
7 association, the New Mexico finance authority or the state  
8 board of finance for a period of two calendar years prior to  
9 the person's appointment to the council and shall not enter  
10 into any contracts to do business with any of the named state  
11 agencies or instrumentalities for a period of two calendar  
12 years after the end of the term for which the member was  
13 appointed. Members of the council and officers and employees  
14 of the council shall be governed by the provisions of the  
15 Governmental Conduct Act. Nothing in this section or in the  
16 Governmental Conduct Act shall be construed as prohibiting an  
17 officer of a financial institution from participating as a  
18 member of the council in setting general policies of the  
19 council, nor shall any provision of the Governmental Conduct  
20 Act prohibit the council or the state treasurer from depositing  
21 funds under the jurisdiction of the council in any financial  
22 institution. A council member shall not hold an office or  
23 employment in a political party.

24 C. ~~[The member appointed pursuant to Paragraph (5)~~  
25 ~~of Subsection A of Section 6-8-2 NMSA 1978 shall serve at the~~

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1 ~~pleasure of the governor.]~~ A member of the council appointed  
2 pursuant to Paragraphs [~~(6) and (7)~~] (2) through (8) of  
3 Subsection A of Section 6-8-2 NMSA 1978 may be removed from the  
4 council by the appointing person or entity, for failure to  
5 attend three consecutive meetings or other cause, in the manner  
6 provided for removal of members of boards of regents under  
7 Article 12, Section 13 of the constitution of New Mexico. A  
8 vacancy in the membership of the council occurring other than  
9 by expiration of term shall be filled in the same manner as the  
10 original appointment but for the unexpired term only."

11 SECTION 3. Section 6-8-4 NMSA 1978 (being Laws 1957,  
12 Chapter 179, Section 4, as amended) is amended to read:

13 "6-8-4. INVESTMENT OFFICE--STATE INVESTMENT OFFICER--  
14 TERMS.--

15 A. There is established an "investment office".  
16 The chief administrative officer of the office shall be known  
17 as the "state investment officer".

18 B. The state investment officer shall be appointed  
19 by the council with the advice and consent of the senate. The  
20 state investment officer shall devote the officer's entire time  
21 and attention to the duties of that office and shall not engage  
22 in any other occupation or profession or hold any other public  
23 office, appointive or elective. The state investment officer  
24 shall be a person qualified, by training and investment  
25 experience, to direct the work of the investment office and

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1 shall have had at least five years' professional experience as  
2 an investment officer. The state investment officer shall  
3 receive a salary to be determined by the [~~state investment~~]  
4 council [~~but in no case less than fifty thousand dollars~~  
5 (~~\$50,000~~) ~~annually~~].

6 C. The state investment officer shall serve for an  
7 initial term of two years beginning July 1, 1981 and thereafter  
8 for terms of four years. The state investment officer may be  
9 removed from office by the council for cause."

10 SECTION 4. Section 6-8-7 NMSA 1978 (being Laws 1957,  
11 Chapter 179, Section 7, as amended) is amended to read:

12 "6-8-7. POWERS AND DUTIES OF THE STATE INVESTMENT COUNCIL  
13 AND STATE INVESTMENT OFFICER--INVESTMENT POLICY--INVESTMENT  
14 MANAGERS.--

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

25 B. The state investment officer shall formulate and

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1 recommend to the council for approval investment [~~regulations~~  
2 ~~or resolutions~~] policies pertaining to the kind or nature of  
3 investments and limitations, conditions and restrictions upon  
4 the methods, practices or procedures for investment,  
5 reinvestment, purchase, sale or exchange transactions that  
6 should govern the activities of the investment office.

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

23 D. The council shall provide an opportunity for  
24 public comment at meetings of the council. Advance notice of  
25 meetings shall be published on the council's web site and in a

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1 newspaper of general circulation at least ten days in advance  
2 of the meeting.

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

10 F. The council, the state investment officer, any  
11 person providing investment advice to the council [~~or~~], state  
12 investment officer or investment office staff for a fee or  
13 other compensation and all persons exercising discretionary  
14 authority or control of funds under the management of the  
15 council are fiduciaries.

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

20 (1) amounts recovered by the legal services  
21 contractor shall be deposited in the state investment council  
22 suspense fund;

23 (2) the council shall submit each proposed  
24 contract to the attorney general and the department for review  
25 of the contingency fee. The attorney general's and the

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1 department's review shall take into account the complexity of  
2 the factual and legal issues presented by the claims to be  
3 pursued under the contract. If the attorney general or the  
4 department advises the council that the proposed contingency  
5 fee is not reasonable, the council may nevertheless approve the  
6 contract and the contingency fee by a majority vote of its  
7 members; and

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

17 (a) established by any of the foregoing  
18 persons or their agents;

19 (b) established in consultation with or  
20 at the request of any of the foregoing persons or their agents;  
21 or

22 (c) controlled by one of the foregoing  
23 persons or their agents.

24 H. The council may select and contract for the  
25 services of one or more custodian banks for all funds under the

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1 council's management. For the purpose of this subsection,  
2 "custodian bank" means a financial institution with the general  
3 fiduciary duties to manage, control and collect the assets of  
4 an investment fund, including receiving all deposits and paying  
5 all disbursements as directed by staff, safekeeping of assets,  
6 coordination of asset transfers, timely settlement of  
7 securities transactions and accurate and timely reporting of  
8 the assets by individual account and in total.

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

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1 New Mexico mortgage finance authority and any tax-exempt  
2 private endowment entity whose sole beneficiary is a state  
3 agency.

4 J. The state investment officer shall provide  
5 quarterly performance reports to the legislative finance  
6 committee. Annually, the [~~state investment officer~~] council  
7 shall [~~ratify and~~] provide written investment policies  
8 [~~including any amendments~~] to the legislative finance  
9 committee."

10 SECTION 5. Section 6-8-14 NMSA 1978 (being Laws 1957,  
11 Chapter 179, Section 14, as amended) is amended to read:

12 "6-8-14. MONTHLY REPORTS.--No later than [~~ten~~] thirty  
13 days after the close of each month, the state investment  
14 officer shall submit to the secretary and the [~~state~~  
15 ~~investment~~] council a report of the operations of the office  
16 during the past month. Each report shall give a complete  
17 statement of the state investment portfolio as of the time of  
18 the report and, in addition, shall include a detailed summary  
19 of the month's investment, reinvestment, purchase, sale and  
20 exchange transactions, setting forth the investments bought,  
21 sold or exchanged, the dates thereof, the prices paid or  
22 obtained, the names of the dealers involved, fees paid for each  
23 transaction, disclosure of contractor arrangements and a  
24 statement of the funds or accounts referred to herein. [~~The~~  
25 ~~reports shall also be circulated to a mailing list of~~

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1 ~~investment bankers and brokers recommended by the council.]~~

2 The reports shall be published on the web [~~sites~~] site of the  
3 council [~~the legislature and the department of finance and~~  
4 ~~administration~~] and shall be open for inspection to the public  
5 and the press in the office of the state investment officer."

6 SECTION 6. Section 6-8-20 NMSA 1978 (being Laws 1987,  
7 Chapter 219, Section 3, as amended) is amended to read:

8 "6-8-20. PRIVATE EQUITY INVESTMENT ADVISORY COMMITTEE  
9 CREATED--MEMBERSHIP--DUTIES--TERMS--LIABILITIES--CONFLICT OF  
10 INTEREST.--

11 A. There is created the "private equity investment  
12 advisory committee" to the council. The committee consists of  
13 the state investment officer, a member of the council appointed  
14 by the council and three members who are qualified by  
15 competence and experience in finance and investment and  
16 knowledgeable about the private equity investment process and  
17 who are appointed by the council.

18 B. Members appointed by the council, except the  
19 council member, shall be appointed for three-year terms;  
20 provided that the terms of the initial committee members shall  
21 be staggered so that the term of one member expires each year.  
22 After the initial appointments, all appointed members shall be  
23 appointed for three-year terms. Members shall serve until  
24 their successors are appointed. A vacancy occurring other than  
25 by expiration of term shall be filled in the same manner as the

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1 original appointment, but only for the unexpired term.

2 C. The committee shall review and make  
3 recommendations to the council on investments authorized  
4 pursuant to Sections 7-27-5.15 and 7-27-5.26 NMSA 1978 and all  
5 other private equity investments and shall advise the council  
6 in matters and policies related to such investments. The  
7 committee shall establish policies for national private equity  
8 fund investments, New Mexico private equity fund investments  
9 and New Mexico film [~~private equity fund~~] investments [~~not less~~  
10 ~~often than annually~~] and shall make copies available to  
11 interested parties.

12 D. Members of the committee shall receive per diem  
13 and mileage as provided for nonsalaried public officers in the  
14 Per Diem and Mileage Act and shall receive no other  
15 compensation, perquisite or allowance.

16 E. The committee shall elect annually a chair from  
17 among its members and may elect other officers as necessary.  
18 The committee shall meet upon the call of the chair or the  
19 state investment officer.

20 F. Members of the committee are public employees  
21 within the meaning of the Tort Claims Act and are entitled to  
22 all immunity and indemnification provided under that act.

23 G. A person shall not be a member of the committee  
24 if any recommendation, action or decision of the committee will  
25 or is likely to result in direct, measurable economic gain to

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1 that person or that person's employer.

2 H. The state investment officer may enter into  
3 contracts with investment advisors for private equity fund  
4 investments and film fund investments authorized pursuant to  
5 Sections 7-27-5.15 and 7-27-5.26 NMSA 1978 and all other  
6 private equity investments and may pay budgeted expenses for  
7 the advisors from the assets of any fund administered under the  
8 supervision of the council, as applicable.

9 I. As used in this section, "private equity  
10 investments" means any legal entity that has as its primary  
11 business activity the investment of funds in return for equity  
12 in or debt of businesses for the purpose of providing capital  
13 for startup, expansion, new product development,  
14 recapitalization or a similar business purpose."

15 SECTION 7. TEMPORARY PROVISION--TRANSITION MEMBERSHIP OF  
16 STATE INVESTMENT COUNCIL.--

17 A. On July 1, 2012, the governor, state treasurer,  
18 commissioner of public lands and chief financial officer  
19 appointed by the governor are no longer members of the state  
20 investment council.

21 B. Within thirty days of July 1, 2012, the  
22 governor, state treasurer and commissioner of public lands  
23 shall appoint members of the state investment council, pursuant  
24 to Paragraphs (2), (3) and (8) of Subsection A of Section 6-8-2  
25 NMSA 1978, who shall serve on an interim basis until confirmed

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1 by the senate.

2 C. The four public members serving on the state  
3 investment council that were appointed by the New Mexico  
4 legislative council shall continue to serve until their terms  
5 expire or they resign or are removed.

6 D. Members of the state investment council shall be  
7 appointed pursuant to Paragraphs (4) through (7) of Subsection  
8 A of Section 6-8-2 NMSA 1978 as vacancies occur on the board  
9 pursuant to Subsection C of this section and shall serve on an  
10 interim basis until confirmed by the senate. The four  
11 appointing entities shall, by lot, determine the order in which  
12 they will appoint replacement members to the council.

13 SECTION 8. EFFECTIVE DATE.--The effective date of the  
14 provisions of this act is July 1, 2012.

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SENATE BILL

**50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

INTRODUCED BY

DISCUSSION DRAFT

FOR THE INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

AN ACT

RELATING TO STATE INVESTMENTS; PROVIDING THAT THE STATE INVESTMENT OFFICER AND STATE INVESTMENT COUNCIL ARE ALLOWED TO MAKE DEBT INVESTMENTS IN NEW MEXICO BUSINESSES; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2007.

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

SECTION 1. Section 7-27-5.15 NMSA 1978 (being Laws 1990, Chapter 126, Section 5, as amended by Laws 2007, Chapter 355, Section 1 and by Laws 2007, Chapter 359, Section 1 and also by Laws 2007, Chapter 360, Section 1) is amended to read:

"7-27-5.15. NEW MEXICO PRIVATE EQUITY FUNDS AND BUSINESS INVESTMENTS.--

A. No more than nine percent of the market value of the severance tax permanent fund may be invested in New Mexico private equity funds or New Mexico businesses under this

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1 section. The investments made in New Mexico businesses  
2 pursuant to this subsection may be either debt or equity  
3 investments.

4 B. In making investments pursuant to Subsection A  
5 of this section, the council shall make investments in New  
6 Mexico private equity funds or New Mexico businesses whose  
7 investments or enterprises enhance the economic development  
8 objectives of the state.

9 C. The state investment officer shall make  
10 investments pursuant to Subsection A of this section only upon  
11 approval of the council, upon review of the recommendation of  
12 the private equity investment advisory committee and within  
13 guidelines and policies established by the council.

14 D. As used in this section:

15 (1) "New Mexico business" means, in the case  
16 of a corporation or limited liability company, a business with  
17 its principal office and a majority of its full-time employees  
18 located in New Mexico or, in the case of a limited partnership,  
19 a business with its principal place of business and eighty  
20 percent of its assets located in New Mexico; and

21 (2) "New Mexico private equity fund" means a  
22 limited partnership, limited liability company or corporation  
23 organized and operating in the United States and maintaining an  
24 office staffed by a full-time investment officer in New Mexico  
25 that:

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1 (a) has as its primary business activity  
2 the investment of funds in return for equity in or debt of  
3 businesses for the purpose of providing capital for start-up,  
4 expansion, product or market development, recapitalization or  
5 similar business purposes;

6 (b) holds out the prospects for capital  
7 appreciation from such investments;

8 (c) has at least one full-time manager  
9 with at least three years of professional experience in  
10 assessing the growth prospects of businesses or evaluating  
11 business plans and who has established permanent residency in  
12 the state;

13 (d) is committed to investing or helps  
14 secure investing by others, in an amount at least equal to the  
15 total investment made by the state investment officer in that  
16 fund pursuant to this section, in businesses with a principal  
17 place of business in the state and that hold promise for  
18 attracting additional capital from individual or institutional  
19 investors nationwide for businesses in the state; and

20 (e) accepts investments only from  
21 accredited investors as that term is defined in Section 2 of  
22 the federal Securities Act of 1933, as amended (15 USCA Section  
23 77(b)), and rules and regulations promulgated pursuant to that  
24 section, or federally recognized Indian tribes, nations and  
25 pueblos with at least five million dollars (\$5,000,000) in

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1 overall investment assets.

2 E. The state investment officer is authorized to  
3 make investments in New Mexico businesses to create new job  
4 opportunities and to support new, emerging or expanding  
5 businesses in a manner consistent with the constitution of New  
6 Mexico if:

7 (1) the investments are made:

8 (a) in conjunction with cooperative  
9 investment agreements with parties that have demonstrated  
10 abilities and relationships in making investments in new,  
11 emerging or expanding businesses; or

12 (b) in New Mexico aerospace businesses  
13 that have received an award from the United States government  
14 or one of its agencies or instrumentalities: 1) in an amount,  
15 not less than one hundred million dollars (\$100,000,000), that  
16 is equal to at least ten times the investment from the  
17 severance tax permanent fund; and 2) for the purpose of  
18 stimulating commercial enterprises;

19 (2) an investment in any one business does not  
20 exceed ten percent of the amount available for investment  
21 pursuant to this section; and

22 (3) the investments represent no more than  
23 fifty-one percent of the total investment capital in a  
24 business; provided, however, that nothing in this subsection  
25 prohibits the ownership of more than fifty-one percent of the

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1 total investment capital in a New Mexico business if the  
2 additional ownership interest:

3 (a) is due to foreclosure or other  
4 action by the state investment officer pursuant to agreements  
5 with the business or other investors in that business;

6 (b) is necessary to protect the  
7 investment; and

8 (c) does not require an additional  
9 investment of the severance tax permanent fund.

10 F. The state investment officer shall make a  
11 commitment to the small business investment corporation  
12 pursuant to the Small Business Investment Act to invest one  
13 percent of the market value of the severance tax permanent fund  
14 to create new job opportunities by providing capital for land,  
15 buildings or infrastructure for facilities to support new or  
16 expanding businesses and to otherwise make investments to  
17 create new job opportunities to support new or expanding  
18 businesses in a manner consistent with the constitution of New  
19 Mexico. On July 1 of each year, the state investment officer  
20 shall determine whether the invested capital in the small  
21 business investment corporation is less than one percent of the  
22 market value of the severance tax permanent fund. If the  
23 invested capital in the small business investment corporation  
24 equals less than one percent of the market value of the  
25 severance tax permanent fund, further commitments shall be made

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1 until the invested capital is equal to one percent of the  
2 market value of the fund.

3 G. The state investment officer shall report  
4 semiannually on the New Mexico debt and private equity  
5 investments made pursuant to this section. Annually, a report  
6 shall be submitted to the legislature prior to the beginning of  
7 each regular legislative session and a second report no later  
8 than October 1 each year to the legislative finance committee,  
9 the revenue stabilization and tax policy committee and any  
10 other appropriate interim committee. Each report shall provide  
11 the amounts invested in each New Mexico private equity fund, as  
12 well as information about the objectives of the funds, the  
13 companies in which each fund is invested and how each  
14 investment enhances the economic development objectives of  
15 the state. Each report shall provide the amounts invested in  
16 each New Mexico business."

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BILL

**50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO PUBLIC FINANCES; IMPOSING A LIMIT ON THE PERCENTAGE OF LAND GRANT PERMANENT FUNDS THAT MAY BE INVESTED IN INTERNATIONAL EQUITIES.

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

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1 Investor Act. The state investment officer and the council are  
2 trustees of all funds under their control and shall see that  
3 money invested is at all times handled in the best interests of  
4 the state. The council may delegate administrative functions  
5 to the state investment officer.

6 B. The state investment officer shall formulate and  
7 recommend to the council for approval investment regulations or  
8 resolutions pertaining to the kind or nature of investments and  
9 limitations, conditions and restrictions upon the methods,  
10 practices or procedures for investment, reinvestment, purchase,  
11 sale or exchange transactions that should govern the activities  
12 of the investment office.

13 C. No more than twenty-five percent of the book  
14 value of the land grant permanent funds may be invested in  
15 international equities at any single time.

16 [~~G.~~] D. The council shall meet at least once each  
17 month, and as often as exigencies may demand, to consult with  
18 the state investment officer concerning the work of the  
19 investment office. The council shall have access to all files  
20 and records of the investment office and shall require the  
21 state investment officer to report on and provide information  
22 necessary to the performance of council functions. The council  
23 may hire one or more investment management firms to advise the  
24 council with respect to the council's overall investment plan  
25 for the investment of all funds managed by the investment

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1 office and pay reasonable compensation for such advisory  
2 services from the assets of the applicable funds, subject to  
3 budgeting and appropriation by the legislature. The terms of  
4 any such investment management services contract shall  
5 incorporate the statutory requirements for investment of funds  
6 under the council's jurisdiction.

7 ~~[D-]~~ E. The council shall provide an opportunity  
8 for public comment at meetings of the council. Advance notice  
9 of meetings shall be published on the council's web site and in  
10 a newspaper of general circulation at least ten days in advance  
11 of the meeting.

12 ~~[E-]~~ F. All funds managed by the state investment  
13 officer shall be managed in accordance with the Uniform Prudent  
14 Investor Act. The council may employ investment management  
15 services to invest the funds and may pay reasonable  
16 compensation for investment management services from the assets  
17 of the applicable funds, subject to budgeting and appropriation  
18 by the legislature.

19 ~~[F-]~~ G. The council, the state investment officer,  
20 any person providing investment advice to the council or state  
21 investment officer for a fee or other compensation and all  
22 persons exercising discretionary authority or control of funds  
23 under the management of the council are fiduciaries.

24 ~~[G-]~~ H. The council may contract for legal services  
25 for litigation on a contingent or partly contingent fee basis,

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1 subject to an expedited solicitation process devised and  
2 approved by the council; provided that:

3 (1) amounts recovered by the legal services  
4 contractor shall be deposited in the state investment council  
5 suspense fund;

6 (2) the council shall submit each proposed  
7 contract to the attorney general and the department for review  
8 of the contingency fee. The attorney general's and the  
9 department's review shall take into account the complexity of  
10 the factual and legal issues presented by the claims to be  
11 pursued under the contract. If the attorney general or the  
12 department advises the council that the proposed contingency  
13 fee is not reasonable, the council may nevertheless approve the  
14 contract and the contingency fee by a majority vote of its  
15 members; and

16 (3) each prospective legal services contractor  
17 seeking to represent the council on a contingent or partly  
18 contingent fee basis shall file with the council the disclosure  
19 required by Section 13-1-191.1 NMSA 1978 disclosing all  
20 campaign contributions made to the governor, attorney general,  
21 state treasurer or any member of the council, or to a political  
22 committee that is intended to aid or promote the nomination or  
23 election of any candidate to a state office if the committee  
24 is:

25 (a) established by any of the foregoing

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1 persons or their agents;

2 (b) established in consultation with or  
3 at the request of any of the foregoing persons or their agents;  
4 or

5 (c) controlled by one of the foregoing  
6 persons or their agents.

7 ~~[H.]~~ I. The council may select and contract for the  
8 services of one or more custodian banks for all funds under the  
9 council's management. For the purpose of this subsection,  
10 "custodian bank" means a financial institution with the general  
11 fiduciary duties to manage, control and collect the assets of  
12 an investment fund, including receiving all deposits and paying  
13 all disbursements as directed by staff, safekeeping of assets,  
14 coordination of asset transfers, timely settlement of  
15 securities transactions and accurate and timely reporting of  
16 the assets by individual account and in total.

17 ~~[I.]~~ J. For funds available for investment for more  
18 than one year, the council may contract with any state agency  
19 to provide investment advisory or investment management  
20 services, separately or through a pooled investment fund,  
21 provided the state agency enters into a joint powers agreement  
22 with the council and that state agency pays at least the direct  
23 cost of such services. Notwithstanding any statutory provision  
24 governing state agency investments, the council may invest  
25 funds available from a state agency pursuant to a joint powers

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1 agreement in any type of investment permitted for the land  
2 grant permanent funds under the prudent investor rule. In  
3 performing investment services for a state agency, the council  
4 and the state investment officer are exempt from the New Mexico  
5 Uniform Securities Act. As used in this subsection, "state  
6 agency" means any branch, agency, department, board,  
7 instrumentality, institution or political subdivision of the  
8 state, the New Mexico finance authority, the New Mexico  
9 mortgage finance authority and any tax-exempt private endowment  
10 entity whose sole beneficiary is a state agency.

11 [~~J.~~] K. The state investment officer shall provide  
12 quarterly performance reports to the legislative finance  
13 committee. Annually, the state investment officer shall ratify  
14 and provide written investment policies, including any  
15 amendments, to the legislative finance committee."

16 **SECTION 2. CONTINGENT EFFECTIVE DATE.--**The provisions of  
17 this act shall become effective upon certification by the  
18 secretary of state that the constitution of New Mexico has been  
19 amended as proposed by a joint resolution of the fiftieth  
20 legislature, second session, entitled "A JOINT RESOLUTION  
21 PROPOSING TO AMEND ARTICLE 12, SECTION 7 OF THE CONSTITUTION OF  
22 NEW MEXICO TO PRESERVE THE LAND GRANT PERMANENT FUNDS BY  
23 INCREASING THE DUTY OF CARE AND CHANGING THE LIMITATIONS ON  
24 INVESTMENT."



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\_\_\_\_ JOINT RESOLUTION

**50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

INTRODUCED BY

DISCUSSION DRAFT

A JOINT RESOLUTION

PROPOSING TO AMEND ARTICLE 12, SECTION 7 OF THE CONSTITUTION OF  
NEW MEXICO TO PRESERVE THE LAND GRANT PERMANENT FUNDS 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 Article 12, Section 2 of  
this [~~article~~] constitution 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  
government and be admitted into the union on an equal footing

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1 with the original states.".

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

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

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

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

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

25 (3) stocks eligible for purchase shall be

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1 restricted to those stocks of businesses listed upon a national  
2 stock exchange or included in a nationally recognized list of  
3 stocks [~~and~~

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

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

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

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

23 (1) in fiscal years 2005 through 2012, an  
24 amount equal to eight-tenths percent of the average of the  
25 year-end market values of the fund for the immediately

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1 preceding five calendar years; provided that any additional  
2 distribution from the permanent school fund pursuant to this  
3 paragraph shall be used to implement and maintain educational  
4 reforms as provided by law; and

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

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

15 SECTION 2. The amendment proposed by this resolution  
16 shall be submitted to the people for their approval or  
17 rejection at the next general election or at any special  
18 election prior to that date that may be called for that  
19 purpose.

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