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BILL

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

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO PUBLIC FINANCES; AMENDING THE MEMBERSHIP, POWERS AND DUTIES OF THE STATE INVESTMENT COUNCIL; PROVIDING FOR THE ELECTION OF THE CHAIR AND VICE CHAIR OF THE COUNCIL; PROVIDING FOR MEETINGS OF THE COUNCIL EVERY OTHER MONTH; EXTENDING REPORTING DEADLINES; AUTHORIZING THE COUNCIL TO CONTRACT FOR LEGAL SERVICES ON A CONTINGENT FEE BASIS.

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;
- (2) the state treasurer;

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1 (3) the commissioner of public lands;

2 (4) the secretary;

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

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

10 [~~(7) two]~~ (6) three members appointed by the
11 governor with the advice and consent of the senate.

12 B. The chair [~~of the council shall be the governor]~~
13 and the vice chair of the council shall be selected annually by
14 the council from among the members appointed pursuant to
15 Paragraphs (5) and (6) of Subsection A of this section. All
16 actions of the council shall be by majority vote, and a
17 majority of the members shall constitute a quorum.

18 C. Members of the council appointed pursuant to
19 Paragraphs [~~(6) and (7)]~~ (5) and (6) of Subsection A of this
20 section shall be reimbursed per diem and mileage pursuant to
21 the provisions of the Per Diem and Mileage Act."

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

24 "6-8-3. COUNCIL TERMS AND QUALIFICATIONS.--

25 A. Members of the council appointed pursuant to

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1 Paragraphs [~~(6) and (7)~~] (5) and (6) of Subsection A of Section
2 6-8-2 NMSA 1978, with the advice and consent of the senate,
3 shall serve for staggered terms of five years. Members of the
4 council shall serve until their successors are appointed and
5 have qualified.

6 B. The members of the council appointed pursuant to
7 Paragraphs [~~(6) and (7)~~] (5) and (6) of Subsection A of Section
8 6-8-2 NMSA 1978 shall be qualified by competence and no less
9 than ten years experience in the field of investment or
10 finance. A member of the council shall not have had any
11 contracts to do business with the state investment council, the
12 investment office, the office of the state treasurer, the
13 educational retirement board, the public employees retirement
14 association, the New Mexico finance authority or the state
15 board of finance for a period of two calendar years prior to
16 the person's appointment to the council and shall not enter
17 into any contracts to do business with any of the named state
18 agencies or instrumentalities for a period of two calendar
19 years after the end of the term for which the member was
20 appointed. Members of the council and officers and employees
21 of the council shall be governed by the provisions of the
22 Governmental Conduct Act. Nothing in this section or in the
23 Governmental Conduct Act shall be construed as prohibiting an
24 officer of a financial institution from participating as a
25 member of the council in setting general policies of the

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1 council, nor shall any provision of the Governmental Conduct
2 Act prohibit the council or the state treasurer from depositing
3 funds under the jurisdiction of the council in any financial
4 institution. A council member shall not hold an office or
5 employment in a political party.

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

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

20 "6-8-4. INVESTMENT OFFICE--STATE INVESTMENT OFFICER--
21 TERMS.--

22 A. There is established an "investment office".
23 The chief administrative officer of the office shall be known
24 as the "state investment officer".

25 B. The state investment officer shall be appointed

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1 by the council. The state investment officer shall devote the
2 officer's entire time and attention to the duties of that
3 office and shall not engage in any other occupation or
4 profession or hold any other public office, appointive or
5 elective. The officer shall be a person qualified, by training
6 and investment experience, to direct the work of the investment
7 office and shall have had at least five years' professional
8 experience as an investment officer. The officer shall receive
9 a salary to be determined by the [~~state investment~~] council
10 [~~but in no case less than fifty thousand dollars (\$50,000)~~
11 ~~annually~~].

12 C. The state investment officer shall serve [~~for an~~
13 ~~initial term of two years beginning July 1, 1981 and thereafter~~
14 ~~for terms of four years. The state investment officer may be~~
15 ~~removed from office by the council for cause~~] at the pleasure
16 of the council."

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

19 "6-8-7. POWERS AND DUTIES OF THE STATE INVESTMENT COUNCIL
20 AND STATE INVESTMENT OFFICER--INVESTMENT POLICY--INVESTMENT
21 MANAGERS.--

22 A. Subject to the limitations, conditions and
23 restrictions contained in policymaking regulations or
24 resolutions adopted by the council, the council may make
25 purchases, sales, exchanges, investments and reinvestments of

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

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

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

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

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

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

18 F. The council may contract for legal services on a
19 contingent fee basis, subject to a request for proposals
20 process approved by the council.

21 G. The council may provide for commercial liability
22 insurance coverage specifically related to official duties and
23 council actions for members of the council, investment office
24 staff and council committees, subject to budget availability.

25 [~~F.~~] H. The council, the state investment officer,

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1 any person providing investment advice to the council [~~or~~],
2 state investment officer or investment office staff for a fee
3 or other compensation and all persons exercising discretionary
4 authority or control of funds under the management of the
5 council are fiduciaries.

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

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

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

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

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

19 "6-8-14. MONTHLY REPORTS.--No later than [~~ten~~] thirty
20 days after the close of each month, the state investment
21 officer shall submit to the secretary and the [~~state~~
22 ~~investment~~] council a report of the operations of the office
23 during the past month. Each report shall give a complete
24 statement of the state investment portfolio as of the time of
25 the report and, in addition, shall include a detailed summary

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1 of the month's investment, reinvestment, purchase, sale and
2 exchange transactions, setting forth the investments bought,
3 sold or exchanged, the dates thereof, the prices paid or
4 obtained, the names of the dealers involved, fees paid for each
5 transaction, disclosure of contractor arrangements and a
6 statement of the funds or accounts referred to herein. [~~The~~
7 ~~reports shall also be circulated to a mailing list of~~
8 ~~investment bankers and brokers recommended by the council.~~]
9 The reports shall be published on the web [~~sites~~] site of the
10 council [~~the legislature and the department of finance and~~
11 ~~administration~~] and shall be open for inspection to the public
12 and the press in the office of the state investment officer."

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

15 "6-8-20. PRIVATE EQUITY INVESTMENT ADVISORY COMMITTEE
16 CREATED--MEMBERSHIP--DUTIES--TERMS--LIABILITIES--CONFLICT OF
17 INTEREST.--

18 A. There is created the "private equity investment
19 advisory committee" to the council. The committee consists of
20 the state investment officer, a member of the council appointed
21 by the council and three members who are qualified by
22 competence and experience in finance and investment and
23 knowledgeable about the private equity investment process and
24 who are appointed by the council.

25 B. Members appointed by the council, except the

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1 council member, shall be appointed for three-year terms;
2 provided that the terms of the initial committee members shall
3 be staggered so that the term of one member expires each year.
4 After the initial appointments, all appointed members shall be
5 appointed for three-year terms. Members shall serve until
6 their successors are appointed. A vacancy occurring other than
7 by expiration of term shall be filled in the same manner as the
8 original appointment, but only for the unexpired term.

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

19 D. Members of the committee shall receive per diem
20 and mileage as provided for nonsalaried public officers in the
21 Per Diem and Mileage Act and shall receive no other
22 compensation, perquisite or allowance.

23 E. The committee shall elect annually a chair from
24 among its members and may elect other officers as necessary.
25 The committee shall meet upon the call of the chair or the

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1 state investment officer.

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

5 G. A person shall not be a member of the committee
6 if any recommendation, action or decision of the committee will
7 or is likely to result in direct, measurable economic gain to
8 that person or that person's employer.

9 H. The state investment officer may enter into
10 contracts with investment advisors for private equity fund
11 investments and film fund investments authorized pursuant to
12 Sections 7-27-5.15 and 7-27-5.26 NMSA 1978 and all other
13 private equity investments and may pay budgeted expenses for
14 the advisors from the assets of any fund administered under the
15 supervision of the council, as applicable.

16 I. As used in this section, "private equity
17 investments" means any legal entity that has as its primary
18 business activity the investment of funds in return for equity
19 in or debt of businesses for the purpose of providing capital
20 for startup, expansion, new product development,
21 recapitalization or a similar business purpose."

22 SECTION 7. TEMPORARY PROVISION--TRANSITION MEMBERSHIP OF
23 STATE INVESTMENT COUNCIL.--

24 A. On July 1, 2011, the chief financial officer
25 appointed by the governor is no longer a member of the state

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1 investment council.

2 B. Within thirty days of July 1, 2011, the governor
3 shall appoint a member of the state investment council,
4 pursuant to Paragraph (6) of Subsection A of Section 1 of this
5 act, who shall serve on an interim basis until confirmed by the
6 senate.

7 SECTION 8. EFFECTIVE DATE.--The effective date of the
8 provisions of this act is July 1, 2011.

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