SENATE BILL

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

FOR THE NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE

AN ACT

RELATING TO THE NEW MEXICO FINANCE AUTHORITY; CHANGING THE QUORUM REQUIREMENTS OF THE NEW MEXICO FINANCE AUTHORITY; PROVIDING FOR REPLACEMENT OF MEMBERS, FOR ORIENTATION OF NEW MEMBERS AND FOR ELECTION OF THE CHAIR AND VICE CHAIR OF THE NEW MEXICO FINANCE AUTHORITY; ESTABLISHING AN AUDIT COMMITTEE IN THE AUTHORITY; IMPOSING RESTRICTIONS AND DUTIES ON MEMBERS OF THE NEW MEXICO FINANCE AUTHORITY.

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

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corporate, separate and apart from the state, constituting a governmental instrumentality to be known as the "New Mexico finance authority" for the performance of essential public functions.

B. The authority shall be composed of eleven members. The secretary of finance and administration, the secretary of economic development, the secretary of energy, minerals and natural resources, the secretary of environment, the executive director of the New Mexico municipal league and the executive director of the New Mexico association of counties or their designees shall be ex-officio members of the authority with voting privileges. The governor, with the advice and consent of the senate, shall appoint to the authority the chief financial officer of a state higher educational institution and four members who are residents of the state. The appointed members shall serve at the pleasure of the governor.

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

D. Each appointed member before entering upon the

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member's duty shall take an oath of office to administer the duties of the member's office faithfully and impartially. A record of the oath shall be filed in the office of the secretary of state.

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

F. The chief executive officer of the authority shall direct the affairs and business of the authority, subject to the policies, control and direction of the authority. The secretary of the authority shall keep minutes of all meetings of the authority and a record of [~~the~~] all other proceedings of the authority and shall be custodian of all books, documents and papers filed with the authority, the minute book or journal of the authority and its official seal. Minutes of the authority meetings shall be approved in an open meeting of the authority. The secretary of the authority shall make copies of

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all minutes and other records and documents of the authority and give certificates under the official seal of the authority to the effect that the copies are true copies, and all persons dealing with the authority may rely upon the certificates.

G. Meetings of the authority shall be held at least quarterly or at the call of the chair or whenever three members shall so request in writing. [~~A majority of~~] Six members [~~then serving constitutes~~] constitute a quorum for the transaction of any business. The affirmative vote of at least a majority of a quorum present shall be necessary for any action to be taken by the authority. An ex-officio member may designate in writing another person to attend meetings of the authority as the ex-officio member's sole designee and to the same extent and with the same effect act in the ex-officio member's stead. A change in designee must be in writing and is subject to the approval of the chair. No vacancy in the membership of the authority shall impair the right of a quorum to exercise all rights and perform all duties of the authority. The authority shall provide an opportunity for public comment at meetings of the authority.

H. A designee of an ex-officio member and each member who is not an ex-officio member shall have no less than ten years' experience in the field of institutional investment, accounting, law, public finance, banking or public project planning or engineering.

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I. A member of the authority may be:

(1) deemed by the authority to have resigned for failure to attend three meetings in any twelve-month period and may be replaced by the appointing person or entity; or

(2) removed from the authority for other cause, in the manner provided for removal of members of boards of regents under Article 12, Section 13 of the constitution of New Mexico.

J. A vacancy in the membership of the authority occurring other than by expiration of term shall be filled in the same manner as the original appointment, but for the unexpired term only.

K. The authority shall provide no less than eight hours of orientation and training for new members. The training shall include instruction regarding the mission, goals, strategic plans, operations, programs and funds of the authority and public entity finance and ethics.

L. Members of the authority shall annually establish a work plan for the authority and a staffing review analysis of authority staffing levels, training and adequacy. The work plan and staffing review analysis shall be provided to the New Mexico finance authority oversight committee.

M. Members of the authority and officers and employees of the authority shall be governed by the provisions of the Governmental Conduct Act. Nothing in this section or in

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the Governmental Conduct Act shall be construed as prohibiting an officer of a financial institution from participating as a member of the authority in setting general policies of the authority, nor shall any provision of the Governmental Conduct Act prohibit the authority from depositing funds under the jurisdiction of the authority in any financial institution. An authority member shall not hold office or employment in a political party.

[~~H.~~] N. Each member of the authority shall give bond as provided in the Surety Bond Act. All costs of the surety bonds shall be borne by the authority.

O. The authority shall appoint an audit committee from among its membership. Minutes shall be recorded for all meetings of the audit committee and be maintained pursuant to the provisions of the Audit Act and the rules of the state auditor. Audit committee members shall be provided annual training related to the duties of the audit committee. At a minimum, the audit committee shall:

(1) attend the entrance and exit conferences for annual and special audits; and

(2) meet with the certified public accounting firm performing the external financial audit at least monthly after audit field work until the conclusion of the audit.

[~~I.~~] P. The authority is not created or organized, and its operations shall not be conducted, for the purpose of

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making a profit. No part of the revenues or assets of the authority shall benefit or be distributable to its members, officers or other private persons. The members of the authority shall receive no compensation for their services but shall be reimbursed for actual and necessary expenses at the same rate and on the same basis as provided for public officers in the Per Diem and Mileage Act.

[~~J.~~] Q. The authority shall not be subject to the supervision or control of any other board, bureau, department or agency of the state except as specifically provided in the New Mexico Finance Authority Act. No use of the terms "state agency" or "instrumentality" in any other law of the state shall be deemed to refer to the authority unless the authority is specifically referred to in the law.

[~~K.~~] R. The authority is a governmental instrumentality for purposes of the Tort Claims Act."

SECTION 2. Section 6-21-21 NMSA 1978 (being Laws 1992, Chapter 61, Section 21, as amended) is amended to read:

"6-21-21. MONEY OF THE AUTHORITY--EXPENSES--AUDIT--ANNUAL REPORT.--

A. All money of the authority, except as otherwise authorized or provided in the New Mexico Finance Authority Act or in a bond resolution, trust indenture or other instrument under which bonds are issued, shall be deposited as soon as practical in a separate account or accounts in banks or trust

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companies organized under the laws of this state. All deposits of money shall be secured, if required by the authority, in such a manner as the authority determines to be prudent. Banks or trust companies are authorized to give security for deposits of the authority.

B. Subject to the provisions of any contract with bondholders, the authority shall prescribe a system of accounts.

C. Money held by the authority that is not needed for immediate disbursement, including [~~any funds~~] money held in reserve, may be deposited with the state treasurer for short-term investment pursuant to Section 6-10-10.1 NMSA 1978 or may be invested in direct and general obligations of or obligations fully and unconditionally guaranteed by the United States, obligations issued by agencies of the United States, obligations of this state or any political subdivision of the state, interest-bearing time deposits, commercial paper issued by corporations organized and operating within the United States and rated "prime" quality by a national rating service, other investments permitted by Section 6-10-10 NMSA 1978 or as otherwise provided by the trust indenture or bond resolution, if the [~~funds are~~] money is pledged for or [~~secure~~] secures payment of bonds issued by the authority.

D. The authority shall have an audit of its books and accounts made at least once each year by the state auditor

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or by a certified public accounting firm whose proposal has been reviewed and approved by the state auditor. The cost of the audit shall be an expense of the authority. [~~Copies~~] After the audit report has been released by the state auditor and becomes a matter of public record, the audit report shall be approved in an open meeting of the authority, and copies of the audit report shall be presented in person by a representative of the certified public accounting firm and submitted to the governor and the New Mexico finance authority oversight committee and made available to the public.

E. The authority shall submit a report of its activities to the governor and to the legislature not later than December 1 of each year. Each report shall set forth a complete operating and financial statement covering its operations for that year."

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2014.

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