STATE PERMANENT FUND TASK FORCE

FINAL REPORT

New Mexico Legislative Council Service
Santa Fe, New Mexico
December 2005

TABLE OF CONTENTS

REPORT OF THE STATE PERMANENT FUND TASK FORCE

Introduction

This is the second interim report of the State Permanent Fund Task Force. Originally created in 2003 by Senate Joint Memorial 14, the task force was continued pursuant to Senate Joint Memorial 13 of the 2005 first legislative session. Pursuant to its statutory duties, the task force undertook a broad examination of the land grant and severance tax permanent funds, the public employees retirement fund, the educational retirement fund and, to a lesser extent, the state treasurer's investment activities. Specifically, the task force reviewed investment policies and practices, reporting procedures and benchmarks, alternative investment opportunities and the actuarial condition of the retirement funds.

Background

The task force was created in recognition of the fact that the land grant and severance tax permanent funds "are an integral and necessary ingredient for the future prosperity of New Mexico's citizens" and because the "actuarial soundness of the retirement funds are absolutely necessary in order to maintain a healthy work environment in the public sector." Moreover, passage of Senate Bill 181 of the 2005 first legislative session focused attention on the unfunded liability of the Educational Retirement Board and the need for the task force to explore strategies to guarantee the ability of the public pension funds to meet their statutory obligation.

Statutory Duties

The task force is charged with examining the controls and safeguards applicable to investment of the land grant and severance tax permanent funds, the public employees retirement fund and the educational retirement fund. The task force interpreted this mandate as having three components: (a) annual income to the funds, (b) investment performance and (c) annual payout obligations.

Membership

The task force consisted of 13 voting members and 10 advisory members, including members of the legislature and certain designated public officials. The voting members appointed by the Legislative Council for the 2005 interim included:

Chair

Representative John A. Heaton

Vice Chair

Senator John Arthur Smith

Legislative Members

Senator Joseph J. Carraro
Representative Justine Fox-Young
Senator Phil A. Griego
Representative Larry A. Larranaga
Senator Carroll H. Leavell
Representative Henry Kiki Saavedra
Representative Luciano "Lucky" Varela

Public Officials

Gary Bland, State Investment Council (SIC)
Frank Foy, Educational Retirement Board (ERB)
James Jimenez, Department of Finance and Administration (DFA)
Robert Gish, Public Employees Retirement Association (PERA)

The advisory members appointed by the Legislative Council for the 2005 interim included:

Legislative Members

Represenative Donald E. Bratton
Senator Pete Campos
Senator Carlos R. Cisneros
Senator Joseph A. Fidel
Representative Miguel P. Garcia
Senator Stuart Ingle
Representative Kathy A. McCoy

Senator Leonard Lee Rawson

Senator H. Diane Snyder

Representative Joe M Stell

Other frequent participants included Evalynne Hunemuller, ERB; Terry Slattery, PERA; Robert Jacksha, SIC; and Scott Stovall and Olivia Padilla-Jackson, DFA.

The task force received staff support from the Legislative Council Service (LCS) and the Legislative Finance Committee (LFC).

Work During the 2004 Interim

The task force convened on six occasions, meeting in Albuquerque, Las Cruces and Santa Fe. The task force began its work by reviewing reports from fund managers with respect to investment performance and the actuarial soundness of the two retirement funds. The task force then explored alternative investment strategies including hedge funds, derivatives, securities lending and private equity investments. The task force committed a significant amount of time to the review of the SIC, ERB and PERA general consultant's quarterly reports and the benchmarks used to gauge investment performance. Included in this review was the quarterly report of the LFC which coalesces the consultant's reports into a single document. This review also focused on asset allocation and risk tolerance. The task force revisited the performance of the severance tax and land grant permanent funds and explored the potential impact on the funds if additional contributions were made to the severance tax permanent fund.

With respect to the retirement funds, the task force received testimony concerning the use of pension obligation bonds in the context of reducing unfunded liabilities. The task force reviewed and compared retirement plan benefits, employer and employee contribution rates, the impact of three-tier licensure, the advantages and disadvantages of defined benefit and defined contribution plans and the unfunded liabilities of both the educational retirement and the public employees retirement funds. Also, the task force briefly examined the condition of the retiree health care fund.

At the conclusion of its work, the task force received a report concerning the investment practices and performance of the State Treasurer's Office. Finally, the task force considered certain revisions to the public records statutes.

Highlights of Recommendations and Proposed Legislation

With some $34 billion in combined investments, the task force recognized the need for on-going legislative oversight of ERB, PERA, SIC and the State Treasurer's Office. Monitoring fund balances, investment performance and obligations is considered to be in the best interest of the public. Ultimately, if an investment agency's ability to meet its obligations is compromised, it rests with the legislature to craft a solution. Therefore, it is only prudent for the legislature to receive reports, make recommendations and implement corrective action before a crisis emerges. To this end the task force recommends the creation of a permanent State Investment and Retirement Systems Oversight Committee. The committee would function during the interim and consist of five members from the house of representatives, five members from the senate and five nonvoting members, one each from ERB, DFA, PERA, SIC and the State Treasurer's Office.

With respect to the Educational Retirement Board, the task force recommends the addition of three new board members, all of whom must have at least 10 years of investment or public finance experience. One member would be appointed by the governor, one by the New Mexico Council of University Presidents and one by the New Mexico Coalition of School Administrators.

The task force thoroughly examined the ERB and PERA retiree return-to-work provisions, noted issues associated with employee morale and also examined stress on the actuarial soundness of the retirement funds. Accordingly, the task force is recommending several changes to the return-to-work provisions of the Educational Retirement Act and the Public Employees Retirement Act. Among them are:

- Both PERA and ERB return-to-work retirees will have a 12-month layout from employment, including employment as an independent contractor. (A three-year exception will allow reemployment after a 90-day layoff for peace officers and water and wastewater facility officers if the employer is a municipality with less than 10,000 population or county with less than 30,000 population.)
- Both PERA and ERB will require a return-to-work retiree to make employee contributions once annual earnings exceed $30,000.
- Both PERA and ERB return-to-work retirees will have pension benefits suspended once

annual earnings exceed $50,000.

- Both PERA and ERB return-to-work retirees will have pension benefits suspended once they complete three years of work. After three years the retiree reenters the system and retirement benefits will be recomputed when the return-to-work retiree eventually ceases to work.
- A requirement that the local governing body of a municipality, a county or a local school board must formally adopt a resolution approving hiring of return-to-work retirees, with notice and public comment opportunity.

A second recommendation from the task force on the subject of retiree return-to-work provides for complete elimination of the program effective July 1, 2006.

In consideration of changing mortality rates and the pressure exerted on the retirement funds, the task force is recommending that both ERB and PERA change the rules for normal retirement for new employees to require 30 years of service coupled with the Rule of 80.

The task force also recommends that employee retirement contribution rates be linked to future salary increases.

With respect to the severance tax permanent fund, the task force endorsed a memorial that urges the legislature to discontinue the practice of using severance tax revenue in excess of 95 percent of annual collections for supplemental severance tax bonds.

Finally, the task force endorsed legislation that will make a technical correction to the film production tax credit. This legislation will not alter the purpose of the program, but rather, it will clarify the original intent of the legislature when it created the program.

Appendix A

2005 Interim Work Plan

2005 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
STATE PERMANENT FUND TASK FORCE

Membership

Rep. John A. Heaton, Chair
Sen. John Arthur Smith, Vice Chair
Sen. Joseph J. Carraro
Rep. Justine Fox-Young
Sen. Phil A. Griego
Rep. Larry A. Larranaga
Sen. Carroll H. Leavell
Rep. Henry Kiki Saavedra
Rep. Luciano "Lucky" Varela

Advisory Members

Rep. Donald E. Bratton
Sen. Pete Campos
Sen. Carlos R. Cisneros
Sen. Joseph A. Fidel
Rep. Miguel P. Garcia
Sen. Stuart Ingle
Rep. Kathy A. McCoy
Sen. Leonard Lee Rawson
Sen. H. Diane Snyder
Rep. Joe M Stell

Work Plan

During the 2005 interim, the task force will focus on the following activities.

1. The task force will review the investment policies and safeguards applicable to investment of New Mexico's permanent funds and retirement funds.

2. The task force will continue to monitor current fund balances, investment performance, portfolio composition and growth expectations.

3. The task force will examine the variety of investment opportunities currently available in the marketplace, including derivatives.

4. The task force will review the sources of revenue for the funds, distributions made from the funds and the actuarial outlook.

5. The task force will explore alternative strategies for ensuring that the principal balances of the several permanent funds are adequately protected and for minimizing investment expense.

APPROVED 2005 MEETING SCHEDULE

Date	Location
June 3	Santa Fe
July 6-7	Albuquerque
August 3-4	Las Cruces
September 8-9	Santa Fe
October 13-14	Santa Fe
November 28-29	Santa Fe

Appendix B

Meeting Agendas and Minutes of Meetings

Revised: June 1, 2005

TENTATIVE AGENDA
for the
STATE PERMANENT FUND TASK FORCE

June 3, 2005
Room 307, State Capitol
Santa Fe

Friday June 3, 2005

10:00 a.m.	**Call to Order**
10:05 a.m.	**Summary of 2005 Legislation** —Amy Chavez, Staff Attorney, Legislative Council Service (LCS)
10:30 a.m.	**Round Table Discussion: Update From Fund Managers** —Gary Bland, State Investment Officer —Frank Foy, Education Retirement Investment Officer —Bob Gish, Public Employees Retirement Officer
12:00 noon	**Lunch**
1:30 p.m.	**Work Plan and Meeting Schedule Development** —Doug Williams, Researcher, LCS
2:00 p.m.	**Committee Discussion of July Agenda**
2:30 p.m.	**Adjourn**

MINUTES
of the
FIRST MEETING
of the
STATE PERMANENT FUND TASK FORCE

June 3, 2005
State Capitol, Room 307
Santa Fe

The first meeting of the State Permanent Fund Task Force for the 2005 interim was called to order by Representative John A. Heaton, chair, on Friday, June 3, 2005, at 10:05 a.m. in Room 307 of the State Capitol in Santa Fe.

PRESENT	**ABSENT**
Rep. John A. Heaton, Chair	Rep. Justine Fox-Young
Sen. John Arthur Smith, Vice Chair	Sen. Carroll H. Leavell
Gary Bland, State Investment Council (SIC)	Rep. Henry Kiki Saavedra
Sen. Joseph J. Carraro	
Frank Foy, Educational Retirement Board (ERB)	
Robert Gish, Public Employees Retirement Association (PERA)	
Sen. Phil A. Griego	
Rep. Larry A. Larranaga	
Scott Stovall, State Board of Finance	
Rep. Luciano "Lucky" Varela	

Advisory Members

Rep. Miguel P. Garcia	Rep. Donald E. Bratton
Rep. Kathy A. McCoy	Sen. Pete Campos
Sen. Leonard Lee Rawson	Sen. Carlos R. Cisneros
Sen. H. Diane Snyder	Sen. Joseph A. Fidel
Rep. Joe M Stell	Sen. Stuart Ingle

Staff
Amy Chavez, Staff Attorney, Legislative Council Service (LCS)
Greg Geisler, Legislative Finance Committee (LFC)
Larry Matlock, Historian, LCS
Doug Williams, Researcher, LCS

Guests
The guest list is in the meeting file.
Copies of all handouts and written testimony are in the meeting file.

Friday, June 3

Summary of 2004 Legislation

Ms. Chavez reviewed the legislation that was endorsed by the task force during the last interim, all of which passed and was signed into law. The bills were:

- SJM 13 — a memorial re-constituting the task force in 2005.
- HB 388 — a bill related to out-of-state banks and securities lending.
- HB 389 — a bill related to the Uniform Prudent Investor Act.
- SB 61 — a bill related to an exemption from the Procurement Code.

The chair expressed interest in receiving and reviewing the quarterly reports required by HB 389. Mr. Bob Jacksha, deputy state investment officer, indicated that the SIC has copies of its quarterly report for distribution to the task force.

Representative Varela inquired about uniform rules related to procurement now that the investment agencies are exempt from the Procurement Code. Mr. Bland indicated that the SIC would have rules available for review at the next meeting.

Representative Varela noted that three bills relating to the adequacy of retirement plan funding were vetoed and that the task force needs to come to a consensus strategy for retirement plan funding.

Senator Smith suggested that any requests for enhancements to any of the retirement plans be reviewed by the task force as well as the LFC.

The chair directed staff to draft a letter to the LFC requesting that any request for retirement plan enhancements be referred to this task force.

Round Table Discussion by Fund Managers

Mr. Bland led off the investment manager round table discussion. He invited the task force members to a pension fund conference at the Santa Ana Hyatt Regency on June 27-28, 2005.

He then proceeded to review the SIC 2005 first quarter report (see handout). Mr. Bland explained that SIC has been outperforming the benchmark indices for the various asset classes.

The chair asked about standard benchmarks for all of the trust funds. The investment officers indicated that no single standard is feasible because of the differences in asset allocation among the funds.

Senator Carraro suggested that the task force set up its own measure of investment performance that the general public can understand.

The chair stressed that the legislature needs a means to measure investment performance.

Representative Varela questioned if the administration is measuring the economic benefits of the disbursements being made from the severance tax and land grant permanent funds.

Representative Larranaga asked if the SIC is measuring the economic impact of the venture capital investments. Mr. Bland responded that a quarterly report is prepared by the SIC and a copy will be made available at the next meeting.

Mr. Gish made a presentation concerning investment returns for the Public Employees Retirement Fund (see handout).

Representative Varela requested a report on the Legislative Retirement Fund. Terry Slattery, executive director, PERA, testified that the $2 million of startup money guarantees the actuarial soundness of the Legislative Retirement Fund at this point. Overall, PERA is 93 percent funded and, as of June 30, 2004, PERA was paying out approximately $50 million per year more than it was receiving in contributions.

Mr. Foy indicated that the Educational Retirement Fund is 75 percent funded and, as of June 30, 2004, ERB was paying out $120 million per year more than it was receiving in contributions.

Senator Carraro asked for a comparison of investment fund performance compared to the Dow Jones Industrial Average. The chair requested that the investment officers meet to identify a benchmark that might be used to measure performance that can be understood by the public.

Evalynne Hunemuller, director, ERB, reviewed the June 30, 2004 ERB actuarial experience study (see handout). The experience study indicates that the three tier licensure program will cost more than originally believed.

Representative Varela requested an update from the LFC on the subject of defined contribution versus defined benefit retirement plans.

Work Plan Development

On the subject of the work plan, the meeting dates were adopted with one change. The October meeting dates will be on the 13th and 14th. Locations are:

July - Albuquerque
August - Las Cruces
September - Santa Fe
October - Santa Fe
November - Santa Fe

The task force will focus on the following subjects during the interim:

1. Review the investment policies and safeguards applicable to investment of New Mexico's permanent funds and retirement funds.

2. Monitor current fund balances, investment performance, portfolio composition and growth expectations.

3. Examine the variety of investment opportunities currently available in the marketplace, including derivatives.

4. Review the sources of revenue for the funds, the distributions made from the funds and the actuarial outlook.

5. Explore alternative strategies for ensuring that the principal balances of the several permanent funds are adequately protected and for minimizing investment expense.

Other Business

There was no other business brought before the committee.

Adjournment

Representative Heaton adjourned the meeting at 3:15 p.m.

Revised: July 1, 2005

TENTATIVE AGENDA
for the
SECOND MEETING
of the
STATE PERMANENT FUND TASK FORCE

July 6-7, 2005
UNM Conference Center
1634 University Boulevard NE
Albuquerque

<u>Wednesday, July 6</u>

10:00 a.m. **Call to Order**

10:05 a.m. **Adoption of the June 3, 2005 Minutes**

10:10 a.m. **Primer on Investments**
—Bob Jacksha, Deputy State Investment Officer

11:00 a.m. **Hedge Funds and Derivatives**
—Bob Jacksha, Deputy State Investment Officer

11:30 a.m. **Pension Obligation Bonds**
—Frank Foy, Educational Retirement Board Investment Officer

12:00 noon **Lunch**

1:00 p.m. **Pension Obligation Bonds (continued)**
—Jamie Scranton, Associate, UBS Financial Services, Inc.

2:00 p.m. **Securities Lending, Custodial Banks and Contract Fees**
—Bob Gish, Public Employees Retirement Association Officer
—Frank Foy, Educational Retirement Board Investment Officer

3:00 p.m. **Public Comments**

3:30 p.m. **Recess**

<u>Thursday, July 7</u>

10:00 a.m. **Call to Order**

10:05 a.m. **New Strategies for Investment Diversification: Prudent Investor Act**
—Gary Bland, State Investment Officer
—Frank Foy, Educational Retirement Board Investment Officer
—Bob Gish, Public Employees Retirement Association Officer

11:00 a.m.	**Economic Impact of Private Equity Investments** —Gary Bland, State Investment Officer
12:00 noon	**Lunch**
1:30 p.m.	**Review of Procurement Rules Adopted by Investment Agencies** —Gary Bland, State Investment Officer —Frank Foy, Educational Retirement Board Investment Officer —Bob Gish, Public Employees Retirement Association Officer
2:30 p.m.	**Committee Discussion of August Agenda** —August theme: monitoring and oversight —September theme: features of retirement plans; solvency of plans —October theme: actuarial update; benefit equity; combining plans —November theme: recap and review of proposed legislation
3:00 p.m.	**Public Comments**
3:30 p.m.	**Adjourn**

MINUTES
of the
SECOND MEETING
of the
STATE PERMANENT FUND TASK FORCE

July 6-7, 2005
UNM Conference Center
1634 University Boulevard NE
Albuquerque

The second meeting of the State Permanent Fund Task Force for the 2005 interim was called to order by Representative John A. Heaton, chair, on Wednesday, July 6, 2005, at 10:05 a.m. at the UNM Conference Center in Albuquerque.

PRESENT	**ABSENT**
Rep. John A. Heaton, Chair	Sen. John Arthur Smith, Vice Chair
Gary Bland, State Investment Council (SIC)	Sen. Phil A. Griego
Sen. Joseph J. Carraro	Sen. Carroll H. Leavell
Rep. Justine Fox-Young	
Frank Foy, Educational Retirement Board (ERB)	
Robert Gish, Public Employees Retirement Association (PERA)	
Rep. Larry A. Larranaga	
Rep. Henry Kiki Saavedra	
Scott Stovall, State Board of Finance	
Rep. Luciano "Lucky" Varela	

Advisory Members

Rep. Donald E. Bratton	Sen. Pete Campos
Rep. Miguel P. Garcia	Sen. Carlos R. Cisneros
Rep. Kathy A. McCoy	Sen. Joseph A. Fidel
Sen. H. Diane Snyder	Sen. Stuart Ingle
Rep. Joe M Stell	Sen. Leonard Lee Rawson

Staff
Greg Geisler, Legislative Finance Committee (LFC)
Cleo Griffith, Legislative Council Service (LCS)
Doug Williams, LCS

Guests
The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

<u>Wednesday, July 6</u>

Primer on Investments

Mr. Bob Jacksha made a presentation on investment basics.

- Correlation ranges from -1.0 to +1.0. With a positive correlation, two investments behave alike; with a negative correlation, two investments behave as opposites. Perfect diversification is achieved by investing in instruments that are not correlated, i.e., a zero correlation minimizes risk.
- Beta refers to overall market risk. By definition, the market has a beta of 1.0.
- Alpha refers to investment return in excess of the applicable benchmark.
- Prudent investor rule means fiduciaries must operate as being familiar with matters relating to the management of money, not just with prudence.
- Mr. Jacksha reviewed different asset allocation classes. These are core bonds, high yield bonds, large cap stocks, small cap stocks, international stocks, emerging markets, real estate, private equity and hedge funds.

Pension Obligation Bonds

Ms. Jamie Scranton and Mr. Robert Doherty of UBS Financial Services, Inc., made a presentation concerning pension obligation bonds.

- With passage of SB 181, the increased contributions to the New Mexico Educational Retirement Fund will reduce the unfunded liability to zero within 22 years. The GASB rule for eliminating an unfunded liability is no more than 40 years.
- Pension obligation bonds (POBs) are an alternative funding mechanism for reducing an unfunded liability.
- By selling bonds backed by the state general fund that pay interest of five to six percent to the bondholder and then earn eight percent on the invested bond proceeds, the unfunded liability can be reduced more quickly.
- A discussion followed of the risks involved in issuing fixed, long-term debt and investment returns. New Jersey was cited as an example of what not to do. New Jersey issued POBs at a point when interest rates were high, and investment returns have not performed well enough to provide any savings.

Mr. Frank Foy discussed POBs in general terms.

- He noted that such bonds must be issued as taxable bonds because of the arbitrage potential.
- He noted that the bond rating agencies generally rate POBs one notch below general obligation bonds because they are secured.
- He noted that the minimum POB issue for the ERB should be approximately $250 million. It has been suggested that an issue should be limited to approximately 10 percent to 20 percent of the retirement fund assets, or $750 million to $1.5 billion.
- It was noted that the state of Illinois issued POBs and declared a pension holiday, which effectively used $2 billion of the $10 billion bond issue for recurring annual state government expenditures.

Hedge Funds and Derivatives

Mr. Jacksha made a presentation concerning hedge funds and derivatives.

- Hedge fund categories include relative value (which involves arbitrage), event driven (corporate mergers, bankruptcies), equity long/short trading and tactical trading (futures contracts and currency trading).
- Public pension funds typically have 2.9 percent of their assets in hedge funds.
- Derivative categories include forward-based contracts, e.g., futures, and option-based contracts, e.g., puts and calls.

Securities Lending

Mr. Foy and Mr. Gish made a presentation on the subject of securities lending.

- Mr. Foy provided an explanation of securities lending and noted that, in a recent request for proposal (RFP), Northern Trust was only interested in discounting custodial fees if it represented the PERA, ERB and SIC in securities lending.
- Mr. Gish indicated that it could be desirable if the PERA, ERB and SIC were permitted to engage their own custodial bank rather than be required to use the same custodial as the State Board of Finance.

Recess

The task force recessed at 3:30 p.m.

Thursday, July 7

Representative Heaton called the task force to order at 9:30 a.m.

New Strategies for Investment Diversification

Mr. Bland, Mr. Foy and Mr. Gish made a presentation concerning new strategies for diversifying investments.

- Mr. Bland indicated that it takes approximately three years to restructure the allocation of assets.
- Mr. Bland said that the SIC has one New Mexico real estate investment, a housing complex in Alamogordo.
- Mr. Gish said that the PERA, which unlike the SIC has not previously had the authority to invest in real estate, is in the process of educating the board of trustees with respect to real estate investing.
- Mr. Gish indicated that the PERA would probably take four years to restructure its asset allocation to include real estate and private equity investments.
- In response to a question from the chair, Mr. Jacksha said that the retirement funds and SIC may have different asset allocations based on risk tolerance even if portfolio consultants use exactly the same assumptions regarding risk and return. He note that

SIC manages permanent funds that have a known annual liability (payout formula) while the retirement funds cannot precisely know their annual payout requirements.
- Mr. Foy said that the ERB is in the process of educating the board of trustees with respect to alternative investments and will be conducting an asset allocation study in October.
- Mr. Foy noted that, like the PERA, any assets allocated to alternative investments would probably result in reduced investments in domestic equities. Also, for an asset allocation to be meaningful, it should be not less than five percent of the total assets.

Economic Impact of Private Equity Investments

Mr. Bland reviewed the economic impact of private equity investments.

- The process for approval of a private equity investment is outlined in the attached flow chart.
- Mr. Bland reviewed the economic impact of the $71 million that the SIC has already invested in private equity (see attached chart).
- A general discussion followed of some of the aerospace investments being made in New Mexico.
- It was noted that only the Severance Tax Permanent Fund is invested in private equity.
- Mr. Jacksha observed that the the SIC loan program is involved in making six motion pictures and has created approximately 1,000 jobs. The principal is guaranteed and the SIC is already receiving residuals. The SIC financed the pilot for Wildfire and is committed to financing the next seven episodes.

Review of Procurement Rules

Mr. Bland, Mr. Foy and Mr. Gish made a presentation concerning new procurement rules.

- Mr. Adam Levine, general counsel for the SIC, and Mr. Foy distributed draft policies and procedures for issuing an RFP for investment services.
- Mr. Gish said that the PERA is still in the drafting stage for its policies with respect to an RFP.
- A discussion followed concerning independent review of contract awards. Mr. Jacksha noted that the only review performed in the past by the Attorney General's Office was for legal sufficiency of the contract document and not the actual RFP process. Mr. Foy stated that three months ago, the attorney general (AG) notified all agencies that it would no longer review contracts entered into by agencies that have their own general counsel. Representative Larranaga requested a copy of the AG's letter.
- Two separate issues were identified: the fairness of the RFP process and the legal sufficiency of the contract document.
- Mr. Bland and Mr. Gish stated that the AG's Office has never reviewed the RFP process, only the contract.
- Representative Larranaga requested that the investment agencies have a review of their RFP policies conducted by the AG.

- The chair suggested that at the August meeting the investment agencies return to discuss the procedures in place for ensuring the value inherent in a contract.

Committee Discussion of Future Agendas

The task force discussed the agendas for future meetings.

- The chair requested staff to confer with the investment agencies regarding monitoring and oversight in preparation for the August meeting.
- Both investment performance and actuarial status should be monitored.
- Mr. Foy noted that performance reports are already submitted to the LFC.
- Suggested items for the August agenda:
  - review of the Wilshire Report and other investment reports;
  - discussion of "watch lists" for investment performance;
  - review of SB 181 for long-term adequacy;
  - review of severance tax revenue being directed to the permanent fund during a period of excess collections, as requested by Representative Larranaga; and
  - "what if" scenarios for hypothetical additional revenue that might be directed to the permanent fund, as prepared by Mr. Bland.
- Include Milton Sanchez and the Retiree Health Care Authority on the agenda for the September meeting regarding future liability associated with health insurance.
- Include a discussion of judicial retirement plans on the October agenda (Mr. Gish).

Approval of Minutes

The minutes of the June 3, 2005 meeting were approved unanimously, without exception.

Other Business

There was no other business brought before the committee.

Adjournment

Representative Heaton adjourned the meeting at 2:00 p.m.

Revised: July 19, 2005

TENTATIVE AGENDA
for the
THIRD MEETING
of the
STATE PERMANENT FUND TASK FORCE

August 3-4, 2005
Board of Regents Room
New Mexico State University
Las Cruces

Wednesday, August 3

10:00 a.m. **Call to Order**

10:10 a.m. **Adoption of the July 6-7, 2005 Minutes**

10:20 a.m. **History of Severance Tax Collections and Current Forecast**
—Doug Williams, Legislative Council Service

11:00 a.m. **Hypothetical Impact of Additional Deposits to the Permanent Fund**
—Gary Bland, State Investment Officer

12:00 noon **Lunch**

1:30 p.m. **Review of General Consultant Quarterly Reports**
—Ruthann Moomy, Callan Associates

2:30 p.m. **Review of Legislative Finance Committee Quarterly Report**
—Norton Francis, Legislative Finance Committee (LFC)

3:00 p.m. **Public Comments**

3:30 p.m. **Recess**

Thursday, August 4

9:00 a.m. **Call to Order**

9:10 a.m. **Review of Current Quarterly Reports Submitted to LFC and DFA**
—Bob Gish, Public Employees Retirement Association Investment Officer
—Gary Bland, State Investment Officer
—Frank Foy, Educational Retirement Board Investment Officer

10:30 a.m. **Committee Discussion and Conclusions with Respect to Current Reporting Procedures**

11:30 a.m. **Discussion of September Agenda**

12:00 noon **Adjourn**

MINUTES
of the
THIRD MEETING
of the
STATE PERMANENT FUND TASK FORCE

August 3-4, 2005
NMSU Regents Board Room
Las Cruces

The third meeting of the State Permanent Fund Task Force for the 2005 interim was called to order by Representative John A. Heaton, chair, on Wednesday, August 3, 2005, at 10:10 a.m. at the New Mexico State University (NMSU) Regents Board Room in Las Cruces.

Present	**Absent**
Rep. John A. Heaton, Chair	Gary Bland, SIC
Sen. John Arthur Smith, Vice Chair	Sen. Pete Campos
Frank Foy, Education Retirement Board (ERB)	Sen. Joseph J. Carraro
Robert Gish, Public Employees Retirement Association (PERA)	Rep. Justine Fox-Young
Robert Jacksha, State Investment Council (SIC)	Sen. Phil A. Griego
Sen. Carroll H. Leavell	Rep. Larry A. Larranaga
Rep. Henry Kiki Saavedra	
Scott Stovall, State Board of Finance	
Rep. Luciano "Lucky" Varela	

Advisory Members	
Rep. Donald E. Bratton	Sen. Carlos R. Cisneros
Rep. Joe M Stell	Sen. Joseph A. Fidel
	Rep. Miguel P. Garcia
	Sen. Stuart Ingle
	Rep. Kathy A. McCoy
	Sen. Leonard Lee Rawson
	Sen. H. Diane Snyder

Staff
David Abbey, Legislative Finance Committee (LFC)
Greg Geisler, LFC
Cleo Griffith, Legislative Council Service (LCS)
Larry Matlock, LCS
Doug Williams, LCS

Guests
The guest list is in the meeting file.

Wednesday, August 3

NMSU President Michael Martin offered opening remarks and welcomed the task force.

Representative Heaton asked what universities are doing to meet the need for engineering and science graduates because foreign students cannot get visas; the president said that recruitment efforts would be intensified and programs designed to better prepare graduates for the workforce.

History of Severance Tax Collections and Current Forecast

Mr. Williams made a presentation concerning the history of severance tax bonds and the current status of the Severance Tax Permanent Fund (see attachments). Representative Varela requested the statutory citation for the sweep ($85 million).

Senator Smith requested that union and other association representatives attend the September meeting with respect to retirement funds.

Hypothetical Impact of Additional Deposits to the Permanent Fund

Mr. Jacksha made a presentation outlining the potential impact on the Severance Tax Permanent Fund with annual revenue deposits greater than those currently forecast. The following table is an example of the impact at various revenue levels.

Calendar Year Ending 12/31	Difference in Market Value with Added Annual Contribution of:		
	$10 Million	$20 Million	$50 Million
2006	10,000,000	20,000,000	50,000,000
2007	20,773,000	41,546,000	103,865,000
2008	32,284,753	64,569,506	161,423,764
2009	44,491,098	88,982,196	222,455,490
2010	57,337,517	114,675,034	286,687,586
2011	70,758,748	141,517,496	353,793,740
2012	84,725,467	169,450,935	423,627,337
2013	99,251,315	198,502,630	496,256,575
2014	114,352,963	228,705,925	571,764,813
2015	130,049,852	260,099,704	650,249,259
2016	146,363,787	292,727,575	731,818,936
2017	163,318,374	326,636,747	816,591,868
2018	180,938,506	361,877,012	904,692,529
2019	199,250,172	398,500,345	996,250,862
2020	218,280,449	436,560,898	1,091,402,245

Mr. Jacksha presented the procurement policy adopted by the SIC board of directors. He noted that several changes were made in response to comments from the task force and the SIC board. Mr. Foy and Mr. Gish indicated that they would be seeking approval of their procurement policies at their next respective board meetings. The chair requested the ERB and PERA to return to the task force to explain any differences from SIC procurement policies.

When asked about the compensation typically awarded fund managers, Mr. Foy said they are paid a flat fee of 25 basis points times the value of assets under management. In this way, fund managers are rewarded when assets under management grow and are penalized if they do not.

Review of General Consultant Quarterly Reports

Ruthann Moomy, senior vice president with Callan Associates, made a presentation of the quarterly report prepared by Callan Associates for PERA. She noted that one measure of risk is volatility, as measured by standard deviation. Callan measures "manager effect" and "asset allocation effect" when reporting performance vs. benchmark.

Mr. Gish spoke about the use of the Callan report in terms of underperforming investment managers and the use of "watch lists".

Review of LFC Quarterly Report

Mr. Geisler made a presentation concerning the LFC quarterly report on ERB, PERA, and SIC investment performance.

The chair asked about having one common benchmark for all of the investment agencies. Mr. Geisler noted that the LFC currently reports such a benchmark made up of 60 percent stock plus 40 percent bonds as if they are not actively managed, but simply indexed.

The chair asked the fund managers what deficiencies exist in the LFC report. Mr. Gish indicated that the LFC report is the best available snapshot. Mr. Foy agreed.

The chair indicated that the investment aspect of reporting seems adequate; what is needed is a new report that presents the retirement contributions and benefits impact on the health of the retirement funds.

Representative Varela commented that he does not think the legislature has done enough with respect to actuarial analysis.

Thursday, August 4

Senator Smith called the task force to order at 9:15 a.m.

Review of Current Quarterly Reports Submitted to the LFC and the Department of Finance and Administration

Mr. Foy reviewed the monthly report prepared by the ERB, noting individual fund manager performance and identifying those managers that are currently on the "watch list".

Mr. Stovall asked about asset allocation. Mr. Foy indicated that the board establishes the asset allocation policy.

Senator Smith asked about the composition of the board. Mr. Foy identified the seven members; they consist of public members and gubernatorial appointees.

Mr. Foy said that ERB is preparing a report on defined benefit (DB) and defined contribution (DC) retirement plans pursuant to a memorial passed during the 2005 session. The task force indicated that it wants a presentation on DB vs. DC plans. Also, Senators Smith and

Leavell said that similar presentations should be made to the Revenue Stabilization and Tax Policy Committee and the Legislative Education Study Committee (LESC).

Mr. Jacksha reviewed the monthly SIC "flash report". The chair asked about benchmarks, how they are developed and who approves them. The chair would like to see a universal policy with respect to creating benchmarks and reporting performance.

Dominick Garcia reviewed the monthly report prepared by PERA. The report covers overall market performance for the month, PERA investment performance, asset allocations and individual asset class performance.

Mr. Gish reviewed the quarterly report prepared for the LFC and DFA. The report includes detailed performance by asset class and fund manager for quarterly and annual periods up to 15 years, asset allocations by dollar amount and management, consultant, custodial and brokerage fees.

Representative Varela indicated that the duties of the state treasurer and state auditor should be better defined since they are ex-officio members of the retirement boards. Generally, Representative Varela would like to examine the composition of the boards.

Representative Varela asked about the potential impact on the markets of terrorist events. Mr. Foy and Mr. Jacksha said that the London bombings had little, if any, impact on the markets. Mr. Gish said that it would appear that the markets have already discounted for the threat of terrorism.

In response to a question from Mr. Geisler regarding the role of general consultants, Mr. Gish and Mr. Foy indicated that they rely upon their consultants for independent third party performance evaluation, searches for individual fund managers and advice on asset allocation.

Discussion of September Agenda

The theme for the next meeting will be the status of the retirement funds. The task force indicated that the following should be invited to the meeting:

- the secretary of public education;
- the secretary of higher education;
- the director of the LESC;
- the chairs of the House and Senate Education committees; and
- the director of the Retiree Health Care Authority.

Representative Varela would like to review the "return to work" bill.

Representative Bratton would like a discussion of the impact of three-tier teacher licensing on the retirement fund at the next meeting.

Other Business

The task force recommended that the legislature receive quarterly reports describing the investment performance of the retirement funds using benchmarks that ensure the actuarial soundness of the funds.

The task force adjourned at 11:00 a.m.

Chapter/Date	Use of Revenues for Bonds	Types of Bonds	Purpose of Bonds
Ch. 5, 1961	50% of prior year revenues	Severance tax bonds	Projects specifically authorized by the legislature
State Board of Finance policy, 1993	50% of prior year revenues	Short-term severance tax bonds (commonly known as "sponge" bonds)	Maximize use of revenues for bond by "sponging up" revenues not needed for long-term debt payments, up to statutory maximum
Ch. 6, 1999 special session	62.5% of prior year revenues for severance tax bonds and supplemental severance tax bonds with severance tax bonds limited to 50% of prior year revenues	Supplemental severance tax bonds created; these are any bonds over and above those issued as severance tax bonds (commonly called senior bonds)	Authorized $125 million of supplemental severance tax bonds (estimated capacity for next 5 years); $100 million were for public school capital outlay projects through the Public School Capital Outlay Council and $25 million were for higher education projects
Ch. 95, 2000	75% of prior year revenues for severance tax bonds and supplemental tax bonds, of which 62.5% can be used for long-term bonds. Severance tax bonds limited to 50% of prior year revenues	Created short-term supplemental severance tax bonds (commonly known as "sponge" bonds)	Authorized an additional $75 million of supplemental severance tax bonds (estimated additional capacity for next 5 years) for public school capital outlay projects through the Public School Capital Outlay Council
Ch. 11, 2000 special session	Raised total to 87.5% of prior year revenues of which 62.5% could be used for long-term bonds. Severance tax bonds limited to 50% of prior year revenues	Additional short-term supplemental severance tax bonds	Authorized an additional $400 million of supplemental severance tax bonds (estimated additional capacity for next 10 years) for public school capital outlay projects through the Public School Capital Outlay Council
Ch. 338, 2001	No change	No change	Made a permanent authorization for all supplemental severance tax bonds to be used for public school capital outlay projects and funding for the Public School Capital Improvements Act (SB 9)
Ch. 238, 2003	"Sweep" of year-end revenues (one-time authorization for additional bonds "notwithstanding" the statutory limitations)	Additional short-term supplemental severance tax bonds	Up to $40 million for public school deficiency correction projects

Ch. 429, 2003	"Sweep" of year-end revenues (one-time authorization for additional bonds "notwithstanding" the statutory limitations)	Additional short-term supplemental severance tax bonds	Up to $5 million for improvements at the Palace of the Governors and up to $4 million for purchase of a helicopter for the Department of Public Safety
Ch. 125, 2004	Raised total to 95% of prior year revenues of which 62.5% could be used for long-term bonds. Severance tax bonds limited to 50% of prior year revenues	Additional short-term supplemental severance tax bonds	No change - would be used for public school capital outlay projects and funding for the Public School Capital Improvements Act (SB 9)
Ch. 125, 2004	"Sweep" of year-end revenues (one-time authorization for additional bonds "notwithstanding" the statutory limitations)	Additional short-term supplemental severance tax bonds	Up to $57 million for continuation projects partially funded by the Public School Capital Outlay Council in Sept. 2003 and for deficiency correction projects
Ch. 126, 2004	"Sweep" of year-end revenues (one-time authorization for additional bonds "notwithstanding" the statutory limitations)	Additional short-term severance tax bonds and supplemental severance tax bonds	Up to $10 million for statewide human resources, accounting and management project and up to $10 million for public school deficiency correction projects
Ch. 347, 2005	"Sweep" of year-end revenues (one-time authorization for additional bonds "notwithstanding" the statutory limitations)	Additional short-term supplemental severance tax bonds	Up to $62 million for correcting serious roof deficiences and for a roof repair and replacement initiative of public school facilites

Severance Tax Permanent Fund

(Dollars in Millons)

Fiscal Years Ending June 30	Beginning Market Value	New Contributions	Total Return	Less Beneficiary Distributions	Ending Market Value	Net Severance Tax Revenue	% Revenue Deposited to STPF
1991	$1,544.9	$101.7	$149.4	$127.8	$1,668.2	$150.1	67.8%
1992	1,668.2	72.6	241.4	133.9	1,848.3	137.1	53.0%
1993	1,848.3	85.0	219.3	135.5	2,017.1	156.1	54.4%
1994	2,017.1	73.0	13.9	133.9	1,970.1	161.2	45.3%
1995	1,970.1	54.8	289.0	131.3	2,182.6	148.6	36.9%
1996	2,182.6	73.2	248.4	132.1	2,372.1	144.1	50.8%
1997	2,372.1	125.5	358.3	133.6	2,722.3	195.9	64.0%
1998	2,722.3	84.6	634.0	136.3	3,304.6	187.3	45.2%
1999	3,304.6	53.2	511.0	139.0	3,729.8	147.8	36.0%
2000	3,729.8	90.3	494.3	141.8	4,172.6	196.8	45.9%
2001	4,172.6	172.3	-337.9	144.7	3,862.3	356.3	48.4%
2002	3,862.3	32.1	-332.2	159.2	3,403.0	246.0	13.0%
2003	3,403.0	1.0	90.4	171.0	3,323.4	257.2	0.4%
2004	3,323.4	16.3	456.0	172.4	3,623.3	318.9	5.1%
2005 (unaudited)	3,623.3	?	?	?	?	394.0	?
Totals		**$1,035.6**	**$3,035.3**	**$1,992.5**			

Fiscal Year 2005 Consensus Forecast at Start of 2005 Session 362.8

Sources: State Investment Council, State Board of Finance, Taxation and Revenue Department

Analysis by: LCS

Revised: September 7, 2005

TENTATIVE AGENDA
for the
FOURTH MEETING
of the
STATE PERMANENT FUND TASK FORCE

September 8-9, 2005
Room 322, State Capitol
Santa Fe

<u>**Thursday, September 8**</u>

10:00 a.m. **Call to Order**

10:05 a.m. **Approval of the August 3-4, 2005 Minutes**

10:10 a.m. **Comparison of Plan Benefits; Eligibility; Return to Work: State and Teachers**
—Evalynne Hunemuller, Director, Educational Retirement Board (ERB)
—Terry Slattery, Director, Public Employees Retirement Association (PERA)

11:15 a.m. **Employer and Employee Retirement Contributions: State and Teachers**
—Evalynne Hunemuller, Director, ERB
—Terry Slattery, Director, PERA

12:00 noon **Lunch**

1:00 p.m. **Actuarial Update and Impact of Three-Tier Licensure; Review of SB 181 for Long-Term Adequacy**
—ERB Actuarial Consultant

2:00 p.m. **Public Comments**

3:30 p.m. **Recess**

<u>**Friday, September 9**</u>

9:00 a.m. **Call to Order**

9:05 a.m. **Retiree Health Care Authority**
—Christine Tessman, Acting Director, Retiree Health Care Authority

10:15 a.m.	**Discussion of Possible Revision to the Public Records Statutes** —Adam Levine, General Counsel, State Investment Council (SIC)
11:30 a.m.	**Brief Update on Fiscal Year 2005 Permanent Fund Investment Performance** —Bob Jacksha, SIC
11:45 a.m.	**Committee Discussion of October Agenda** —Defined Benefit vs. Defined Contribution Pension Plans —Consolidated Reporting of Investment Performance —Other
12:00 noon	**Adjourn**

MINUTES
of the
FOURTH MEETING
of the
STATE PERMANENT FUND TASK FORCE

September 8-9, 2005
State Capitol
Santa Fe

The fourth meeting of the State Permanent Fund Task Force for the 2005 interim was called to order by Representative John A. Heaton, chair, on Thursday, September 8, 2005, at 10:05 a.m. at the State Capitol in Santa Fe.

Present
Rep. John A. Heaton, Chair
Sen. John Arthur Smith, Vice Chair
Sen. Joseph J. Carraro
Frank Foy, Education Retirement Board (ERB)
Sen. Phil A. Griego
Robert Jacksha, SIC
Rep. Larry A. Larranaga
Sen. Carroll H. Leavell
Olivia Padilla-Jackson, State Board of Finance
Rep. Henry Kiki Saavedra
Rep. Luciano "Lucky" Varela

Absent
Gary Bland, State Investment Council (SIC)
Sen. Pete Campos
Rep. Justine Fox-Young
Robert Gish, Public Employees Retirement Association (PERA)

Advisory Members
Rep. Donald E. Bratton
Rep. Miguel P. Garcia
Rep. Kathy A. McCoy
Sen. H. Diane Snyder
Rep. Joe M Stell
Sen. Carlos R. Cisneros
Sen. Joseph A. Fidel
Sen. Stuart Ingle
Sen. Leonard Lee Rawson

Staff
Cleo Griffith, Legislative Council Service (LCS)
Larry Matlock, LCS
Stephanie Schardin, Legislative Finance Committee (LFC)
Doug Williams, LCS

Guests
The guest list is in the meeting file.

Thursday, September 8

The minutes of the August 3-4, 2005 meeting were approved with the following addition:

"The task force recommends that the legislature receive quarterly reports concerning the investment performance of the retirement funds using benchmarks that ensure the actuarial soundness of the funds."

Comparison of Retirement Plan Benefits

Evalynne Hunemuller and Paul Swanson, both of ERB, and Terry Slattery and Mary Frederick, both of PERA, made a joint presentation concerning retirement plan benefits. The following table summarizes key differences:

New Mexico Public Retirement System

Provision	ERB	PERA
Retirement Eligibility	a. Rule of 75: Age + Service = 75 b. 25 years regardless of age c. Age 65 with 5 years	a. 25 years regardless of age b. Age 60 with 20 years Age 61 with 17 years Age 62 with 14 years, etc.
Final Average Salary	a. Average earnings for last 5 years or any consecutive 5 years	a. Average of highest 3 years
Multiplier	a. 2.35%	a. 3.00%
Cost-of-Living Adjustment	a. 1/2 CPI beginning at age 65, capped at 4%, minimum at 2%, unless CPI is less than 2%, then equals CPI	a. 3% beginning the 3rd year into retirement
Contributions	a. Member: 7.675% of salary Employer: 9.400% of salary Total: 17.075%	a. Member: 7.42% of salary Employer: 16.59% of salary Total: 24.01%
Minimum Benefit	a. No limit	a. 80% of final average salary with 26.67 years of service

Employer and Employee Retirement Contributions

Ms. Hunemuller, Mr. Swanson, Mr. Slattery and Ms. Frederick made a joint presentation concerning retirement plan contributions. The following table summarizes the contribution rates for ERB and PERA:

Contribution Levels Under SB 181

	ERB			PERA		
Fiscal Year	Employer	Employee	Total	Employer	Employee	Total
2005	8.65%	7.60%	16.25%	16.59%	7.42%	24.01%
2006	9.40%	7.68%	17.08%	16.59%	7.42%	24.01%
2007	10.15%	7.75%	17.90%	16.59%	7.42%	24.01%
2008	11.65%	7.83%	19.48%	16.59%	7.42%	24.01%
2009	12.40%	7.90%	20.30%	16.59%	7.42%	24.01%
2010	13.15%	7.90%	21.05%	16.59%	7.42%	24.01%
2011	13.40%	7.90%	21.30%	16.59%	7.42%	24.01%

Representative Varela observed that the source of funds for the employer share of contributions to PERA is a mix of general funds, other state funds and federal funds while the source of funds for the employer share of contributions to ERB is exclusively general funds.

Representative Varela requested median salary data for both teachers and state employees in addition to the average data contained in the respective presentations.

Representative Varela requested input from union representatives concerning retirement plan return-to-work provisions.

Ms. Padilla-Jackson requested that the component parts of any unfunded liability be identified, e.g., contribution rates versus benefit payments versus investment performance.

Senator Smith requested information concerning actions on the part of other states regarding resolving unfunded liability issues.

Senator Snyder requested a recent history of salary increases for state employees and teachers.

Senator Griego asked how many retired teachers have returned to work. Ms. Hunemuller stated that approximately 900 retired teachers are currently on the payroll.

Senator Griego asked about the impact on the retirement funds of return-to-work provisions. Mr. Slattery stated that it is too soon for PERA to make such an analysis. Ms. Hunemuller stated that there is currently no impact on the teacher's retirement fund; however, to the extent that such provisions encourage retirement at an earlier age, there could be a negative impact in the future because benefits will have to be paid for more years.

Representative Larranaga observed that the corpus of the retirement fund is negatively impacted by a retiree returning to work because the retiree does not contribute to the fund, whereas, if the teaching position is filled by a new employee, the fund would benefit from contributions. Representative Heaton observed that the corpus of the fund benefits from retirees returning to work because the employer does contribute to the fund and benefits do not change for the retiree.

ERB Actuarial Update and Impact of Three-Tier Licensure

Ms. Hunemuller and William "Flick" Fornia of Gabriel, Roeder, Smith & Company reviewed the current status of the Educational Retirement Fund.

Mr. Fornia noted that the actuarial process involves a smoothing of investment returns. As an example, if the objective rate of return is eight percent and actual earnings are 12 percent, the actuary credits the fund with eight percent plus one percent in the current year and adds one percent to the actual return in each of the next three years. As a result, actuarial assets are different from true assets.

There followed a discussion of stock market conditions following the Hurricane Katrina disaster and the potential impact on retirement fund investments. Representative Heaton noted that the important thing is the long-term performance of the funds. Senator Cararro stressed the importance of day-to-day active management of the investment portfolio.

Senator Smith asked about the impact of infusing $50 million into the teacher's retirement fund. Mr. Fornia indicated that it would improve the funding ratio, but did not quantify the impact.

Senator Smith asked about the impact of return-to-work provisions. Mr. Fornia said that the practice of retiring earlier than the actuary estimated, and then returning to work, adversely impacts the retirement fund because benefits will be paid to the retiree longer than anticipated.

Representative Heaton questioned the appropriate period for actuarial projections. Mr. Fornia responded that the underlying actuarial embraces a 90-year period, i.e., it factors in the liability relating to the cost of the newest employees through age 115 (absolute age of death). Also, the actuary reviews the outlook annually and "tests" its assumptions against actual (past) events every five years.

Mr. Fornia applauded the action of the legislature in passing SB 181. From an actuarial standpoint, the legislation established a long-term solution to the ERB unfunded liability.

Public Comment

Carter Bundy of the American Federation of State, County and Municipal Employees Association (AFSCME) stressed that ASFSCME does not endorse any change in the retirement system that would jeopardize the solvency of PERA.

John Doran, a retired state employee, spoke in oppostion to the practice of return-to-work because it tends to inhibit the career development of younger employees.

Saber Basler, President of the Staff Council for the University of New Mexico (UNM), noted that university employees have a higher contribution rate than others and that UNM will be endorsing legislation to change the current system.

Eduardo Holguin of the National Education Association (NEA) indicated that the union will be seeking an increase in the retirement multiplier from 2.3 percent to 2.5 percent. He asserted that this will encourage teachers to work longer in order that they may receive a larger pension. He supports the return-to-work provisions because of the shortage of teachers in the classroom.

The task force recessed at 4:15 p.m.

Friday, September 9

Representative Heaton called the meeting to order at 9:10 a.m.

Retiree Health Care Authority

Christine Tessman, acting director of the Retiree Health Care Authority, and Tim Nimmer and Justin Kindy of The Segal Company made a presentation concerning the actuarial health of the Retiree Health Care Fund. The following table summarizes the actuarial outlook for the fund:

Retiree Health Care Fund
Long-Term Solvency Analysis
(in millions)

Fiscal Years Ending June 30	Beginning Market Value	Total Revenue	Investment Income	Total Expenses	Ending Market Value
2006	152.6	143.5	11.1	153.1	154.2
2007	154.2	159.1	11.1	171.1	153.3
2008	153.3	172.9	11.0	186.6	150.6
2009	150.6	189.7	10.7	207.1	143.8
2010	143.8	207.6	10.0	227.7	133.7
2011	133.7	227.0	9.2	249.3	120.7
2012	120.7	247.4	8.2	270.5	105.8

2013	105.8	268.6	7.1	290.6	91.0
2014	91.0	290.8	6.1	309.7	78.1
2015	78.1	314.0	5.3	328.0	69.4
2016	69.4	338.8	4.9	346.5	66.5
2017	66.5	365.4	5.0	365.4	71.5
2018	71.5	394.1	5.7	384.6	86.7
2019	86.7	424.7	7.3	403.6	115.1
2020	115.1	457.5	9.9	422.4	160.1
2021	160.1	488.8	13.8	441.4	221.3
2022	221.3	522.6	18.9	460.3	302.5
2023	302.5	558.8	25.6	478.8	408.2
2024	408.2	597.7	34.3	496.3	543.9
2025	543.9	639.6	45.5	512.7	716.3

Public Records Discussion

Robert Jacksha and Adam Levine of the SIC discussed the existing public records law with respect to requests from third parties for potential proprietary information from SIC fund managers.

In essence, SIC needs to know the investment holdings of management companies with whom it does business; however, any information that SIC has becomes a public record and, if disclosed, would harm the individual management company by eliminating its competitive advantage. This is particularly important in the private equity investment sector.

Representative Heaton recommended that SIC give careful thought to the approach that might be used to protect proprietary information without jeopardizing public access excessively and return to the task force with a strategy at the October meeting.

Update on Fiscal Year 2005 SIC Investment Performance

Mr. Jacksha made a presentation concerning investment performance by fund and sector. It was noted that fiscal year 2005 rate of return for the Land Grant Permanent Fund was 9.7 percent compared to a passive 60/40 benchmark of 6.5 percent. The following table summarizes the status of the fund:

Land Grant Permanent Fund
Statement of Changes in Investment Assets, at Market Value
(in millions)

Fiscal Years Ending June 30	Beginning Market Value	New Contributions	Total Return	Less Beneficiary Distributions	Ending Market Value
1991	3,126.6	121.2	354.4	259.4	3,342.8
1992	3,342.8	104.4	498.8	262.0	3,684.0
1993	3,684.0	122.9	455.7	261.5	4,001.1

1994	4,001.1	115.6	-9.9	257.9	3,848.9
1995	3,848.9	97.2	625.2	248.1	4,323.2
1996	4,323.2	100.2	495.0	246.0	4,672.4
1997	4,672.4	147.8	895.7	251.2	5,464.7
1998	5,464.7	130.0	1,115.9	255.4	6,455.2
1999	6,455.2	104.7	1,014.8	262.4	7,312.3
2000	7,312.3	217.9	745.2	344.3	7,931.1
2001	7,931.1	325.9	-516.2	322.2	7,418.7
2002	7,418.7	213.3	-652.6	283.1	6,696.3
2003	6,696.3	223.0	221.3	332.8	6,807.8
2004	6,807.8	269.7	959.8	400.7	7,636.6
2005	7,636.6	324.7	687.4	432.5	8,216.1

With respect to the Severance Tax Permanent Fund, the fiscal year 2005 rate of return was 8.9 percent compared to the same passive benchmark of 6.5 percent. The following table summarizes the status of the fund:

Severance Tax Permanent Fund

Statement of Changes in Investment Assets, at Market Value

(Dollars in Millons)

Fiscal Years Ending June 30	Beginning Market Value	New Contributions	Total Return	Less Beneficiary Distributions	Ending Market Value
1991	$1,544.8	$101.7	$149.4	$127.8	$1,668.1
1992	1,668.1	72.6	241.4	133.9	1,848.2
1993	1,848.2	85.0	219.3	135.5	2,017.0
1994	2,017.0	73.0	13.9	133.9	1,970.0
1995	1,970.0	54.8	289.0	131.3	2,182.5
1996	2,182.5	73.2	248.4	132.1	2,372.0
1997	2,372.0	125.5	358.3	133.6	2,722.2
1998	2,722.2	84.6	634.0	136.3	3,304.5
1999	3,304.5	53.2	511.0	139.0	3,729.7
2000	3,729.7	90.3	494.3	141.8	4,172.5
2001	4,172.5	172.3	-337.9	144.7	3,862.2
2002	3,862.2	32.1	-332.2	159.2	3,402.9
2003	3,402.9	1.0	90.4	171.0	3,323.3
2004	3,323.3	35.9	461.2	199.0	3,621.4
2005	3,621.4	19.0	290.7	173.2	3,757.8

Discussion of October Agenda

- defined benefit versus defined contribution (invite State Treasurer Robert Vigil);
- public records (follow-up discussion with SIC);
- economic development impact resulting from SIC investment in private equity;
- PERA actuarial update;
- consolidated reporting of investment performance (invite Greg Geisler of the LFC);

- retirement adequacy, i.e., social security + pension + savings;
- State Board of Finance re: hedging of oil and gas revenue; and
- comparison of New Mexico retirement plans to those of surrounding states.

Other Business

State Treasurer Robert Vigil is opposed to defined contribution retirement plans and pension obligation bonds.

Adjournment

The task force adjourned at 11:45 a.m.

Revised: October 12, 2005

TENTATIVE AGENDA
for the
FIFTH MEETING
of the
STATE PERMANENT FUND TASK FORCE

October 17-18, 2005
Room 322, State Capitol
Santa Fe

<u>Monday, October 17</u>

10:00 a.m.	**Call to Order** **Approval of the September 8-9, 2005 Minutes**
10:05 a.m.	**Defined Benefit and Defined Contribution Retirement Plans** —Educational Retirement Board (ERB) Actuarial Consultant
11:30 a.m.	**Defined Benefit and Defined Contribution Retirement Plans** —Ron Snell, National Conference of State Legislatures (NCSL)
12:00 noon	**Lunch**
1:00 p.m.	**Hedging of Oil and Gas Revenue** —Scott Stovall, State Board of Finance —Bradley Langner, VP and Municipal Capital Finance Manager, J.P. Morgan
2:00 p.m.	**Fiduciary Audit of the State Treasurer's Investments** —James Jimenez, Secretary, Department of Finance and Administration (DFA)
2:30 p.m.	**Public Employees Retirement Association (PERA) Actuarial Update** —Terry Slattery, Director, PERA
3:00 p.m.	**Third-Party Oversight of Investments** —Doug Williams, Legislative Council Service (LCS)
3:30 p.m.	**Public Comment**
4:00 p.m.	**Recess**

<u>Tuesday, October 18</u>

9:00 a.m.	**Call to Order**
9:05 a.m.	**Economic Development Impact of State Investment Council (SIC) Private Equity Investments** —Bob Jacksha, SIC
9:30 a.m.	**Discussion of Public Records Statutes** —Adam Levine, General Counsel, SIC
10:00 a.m.	**Consolidated Reporting of Investment Performance; Benchmarks** —Greg Geisler, Legislative Finance Committee (LFC)
10:30 a.m.	**Consolidated Self-Reporting of Due Diligence Efforts** —Greg Geisler, LFC
11:00 a.m.	**Committee Discussion of November Agenda** —Potential Legislation Continuation of the State Permanent Fund Task Force Membership of Various Boards Oversight of State Treasurer's Office Other —Securities and Exchange Commission Examination of Select Pension Consultants
12:00 noon	**Adjourn**

MINUTES
of the
FIFTH MEETING
of the
STATE PERMANENT FUND TASK FORCE

October 17-18, 2005
State Capitol
Santa Fe

The fifth meeting of the State Permanent Fund Task Force for the 2005 interim was called to order by Representative John A. Heaton, chair, on Monday, October 17, 2005, at 10:20 a.m. at the State Capitol in Santa Fe.

Present
Rep. John A. Heaton, Chair
Gary Bland, State Investment Council (SIC)
Sen. Joseph J. Carraro
Evalynne Hunemuller, Education Retirement Board (ERB) for Frank Foy
Sen. Phil A. Griego
Rep. Larry A. Larranaga
Rep. Henry Kiki Saavedra
Rep. Luciano "Lucky" Varela
Terry Slattery, Public Employees Retirement Association (PERA) for Robert Gish
Scott Stovall, Board of Finance for James Jimenez

Absent
Sen. John Arthur Smith, Vice Chair
Rep. Justine Fox-Young
Sen. Carroll H. Leavell

Advisory Members
Rep. Donald E. Bratton
Rep. Miguel P. Garcia
Rep. Kathy A. McCoy
Rep. Joe M Stell
Sen. Pete Campos
Sen. Carlos R. Cisneros
Sen. Joseph A. Fidel
Sen. Stuart Ingle
Sen. Leonard Lee Rawson
Sen. H. Diane Snyder

Staff
David Abbey, Legislative Finance Committee (LFC)
Cleo Griffith, Legislative Council Service (LCS)
Larry Matlock, LCS
Norton Francis, LFC
Greg Geisler, LFC
Doug Williams, LCS

Guests
The guest list is in the meeting file.

<u>Monday, October 17</u>

The minutes of the September 8-9, 2005 meeting were approved.

Educational Retirement Board (ERB) Report on Defined Benefit (DB) and Defined Contribution (DC) Retirement Plans

Evalynne Hunemuller introduced Chris Conradi and William Fornia of Gabriel, Roeder, Smith & Company. Mr. Conradi and Mr. Fornia reported on their findings resulting from the study required by House Joint Memorial 9 and Senate Joint Memorial 17 of the 2005 session (see handout).

Key points of the presentation are as follows:

- Defined benefit plans promise a specific retirement benefit. In general, the employer bears the risk.
- Defined contribution plans promise a regular, ongoing employer and employee contribution level. Benefits are paid from account balances and, in general, the employee bears the risk.
- ERB's defined benefit plan currently promises a benefit calculated based on final average salary multiplied by 2.35 percent and multiplied by years of service.
- ERB's current financial position, subsequent to SB 181 of the 2005 session, includes an unfunded liability of $2.6 billion and a funded ratio of 74 percent.
- Defined contribution plan advantages include (1) stable cost to employers, (2) members have ownership and (3) a fully portable benefit.
- Defined benefit plan advantages include (1) serving as an aid to recruitment and retention, (2) benefits are based on final average pay which is a more accurate measure of retirement need and (3) recognition of credit for outside service, e.g., military service.
- The current contribution rate is 21.8 percent (7.90 percent employee + 13.9 percent employer). Of this total 8.24 percent is needed to eliminate the unfunded liability, while 13.56 percent is used for normal costs.
- If a defined contribution plan were to be offered to new employees, only 13.56 percent of the total employee/employer contribution would be available for these new employees to invest in their plan. The remaining 8.24 percent would still need to be directed to the unfunded liability.

Representative Heaton asked if SB 181 was sufficient action to allow for the impact of three-tier licensure. Mr. Conradi responded that SB 181 was indeed sufficient.

Overview of Defined Benefit and Defined Contribution Plans

Ronald Snell of the National Conference of State Legislatures (NCSL) provided an overview of DB and DC retirement plans (see handout).

Key points of the presentation are summarized in the following tables.

Features of Defined Benefit and Defined Contribution Plans

	Defined Benefit Plans	Defined Contribution Plans
Benefit Deign	Benefits are determined by a formula and benefit levels are guaranteed.	Benefits are determined by the contributions and investment earnings in a person's account.
Contributions	Members' contributions are set; sponsors are responsible for contributing as much as necessary to provide the promised benefits.	Members' and sponsors' contributions are set.
Employee Salary Changes	Salary increases affect both past and future benefits because the benefit is determined by final average salary.	Salary changes affect future contributions.
Cost of Living Adjustments (COLAs)	Two-thirds of public plans provide automatic COLAs. In other public plans, there is no guaranteed protection from inflation.	Public plan provisions usually do not but can provide for annuities that offer an adjustment for inflation.
Benefit Adequacy	Depends on plan provisions	Depends on investment return
Investment Risk	Regardless of investment performance, employer pays specified lifetime benefit. The employer bears the risk.	The employer's responsibility is to make the scheduled contributions. The employee bears the investment risk.
Investment Results	Investment performance affects funding and does not directly affect benefits. Strong investment performance can lead to enhanced benefits.	Investment performance will help determine the employee's retirement benefit.
Longevity	Benefit levels are guaranteed for a retiree's lifetime. Retirees are often given the option of providing survivor benefits.	Benefits consist of the account balance, which can be annuitized for lifetime income.

	Defined Benefit Plans	Defined Contribution Plans
Portability	Limited	Full
Individual Control	Members have no individual control of benefit levels but affect them collectively through political action.	Members have individual choices among investments and in some plans have choices among contribution amounts.
Simplicity	Members often are confused about the relationship of salaries and retirement benefits.	Structure is easily understandable.
Partially based upon: Committee on Pensions and Investments, Texas House of Representatives, *A Report to the House of Representatives, 77th Texas Legislature: Defined Contribution/Defined Benefit* (Austin, Texas: 2000).		

Employees Who Benefit Most

Defined Benefit Plans	Defined Contribution Plans
Career employees and employees hired in mid-career	Employees who terminate employment at a young age
Employees with substantial pay increases over a career	Employees with modest pay increases over a career
Married employees	Single employees
Employees with long life expectancy	Employees with short life expectancy
Employees who die or become disabled early in their career	Employees who achieve a higher rate of investment return through personal investment selection
Employees who retire early	Employees hired at very young ages
Partially based upon: Buck Consultants, *Study of Retirement Plan Designs for the State of Colorado* (Denver, Colorado: November 2001), 12-13.	

Representative Stell asked about the number of retirement plans that are in financial distress. Mr. Snell said he would provide the task force with that information.

Representative Bratton asked about the features of other retirement plans compared to New Mexico. Mr. Snell said he would provide the task force with that information.

Representative Garcia asked about the potential benefits of combining ERB and the Public Employees Retirement Board (PERA). Mr. Conradi responded by stating that the DC/DB report did not extend to an examination of combining ERB and PERA. Representative Heaton suggested that this subject could be discussed at the November meeting.

Hedging of Oil and Gas Revenue

Scott Stovall introduced Robbie Hyman, bond counsel for the state of New Mexico. Mr. Hyman provided an overview of the severance tax bonding fund and indicated that money in the bonding fund could be used to purchase a contract that would guarantee New Mexico a certain floor price.

Chris Romer, vice president, JP Morgan, introduced Steve Griffin, managing director, energy marketing, JP Morgan. Mr. Griffin provided an overview of the natural gas market. In the fourth quarter of 2005 the price is $13.25 per million cubic feet (mcf) which will result in a 2005 annual average of $9.11; the forecast for 2006 is $8.81 and for 2007 the forecast is $7.10.

Mr. Griffin stressed that natural gas is a physical market that responds to supply and demand.

Mr. Romer stated that New Mexico could enter into long-term contracts that guarantee a minimum price for natural gas. He further stated that this would result in greater bonding capacity and greater deposits to the severance tax permanent fund.

Performance Review and Fiduciary Audit of the Office of the State Treasurer

James Jimenez, secretary of finance and administration, provided an overview of the administration's review of the Office of the State Treasurer (see handout).

Key features of the performance review are as follows:

- a comprehensive review of policies, practices and financial records to identify failures and implement remedies. This review will focus on four tasks:
  - analyze current position, i.e., compliance with laws, rules, regulations and policies;
  - analyze management of investments and returns, i.e., soundness of investment strategy;
  - review investment policies, i.e., controlling and accounting for expenses; and
  - analyze transactions (performance relative to objectives);
- a forensic investigation of transactions, i.e., an investigation of transactions; and
- implementation of remedies.

Representative Heaton asked about the relationship between the Board of Finance and the Office of the State Treasurer. Mr. Jimenez stated that the Office of the State Treasurer is a constitutional office while the Board of Finance is created in statute. Therefore, the Board of Finance cannot compel the Office of the State Treasurer to follow a certain course of action.

Senator Carraro noted that it is a function of the task force to oversee all state investments, including the Office of the State Treasurer.

PERA Actuarial Update

Terry Slattery, executive director of PERA, made a presentation concerning the actuarial position of PERA (see handout).

Key features of PERA's current position are as follows.

- PERA had a positive investment return of 15.55 percent, exceeding the actuarial benchmark of eight percent as of June 30, 2005.
- The same investment return also exceeded the policy benchmark return for the year of 14.4 percent.
- Total investment earnings over the past ten years has exceeded $5.844 billion and the annualized return of the 10-year period was 11.22 percent.
- This performance continues to place PERA in the top quartile of large public pension funds.

Public Comment

Josh Henderson said a defined benefit plan is crucial to our recruitment and retention of employees. Our entry level salaries are not great, but our retirement is. People live on a week-to-week basis knowing they will be taken care of when they retire. Do we want entry level employees to work three or four years and then go to the private sector? That is just subsidizing training for the private sector.

Carter Bundy said that with a defined benefit plan there is the ability to tweak things if there is trouble with the plan. It is possible to change the benefit formula calculations. It is more risky for employees to have a 401k plan. The people who invest well will do well. But even people who invest well will still do poorly compared to professionals. For the most part, most employees will not invest well. We do not want people to be homeless when they hit 85 and 90 years of age.

Brian Klopp, economist, suggested that DC retirement plans should be a supplement to DB plans, not a substitute. He likened retirement finances to a three-legged stool consisting of a defined benefit plan, social security and personal savings.

Scott Adams, with the American Federation of State, County and Municipal Employees, opposes DC pension plans that, on average, have only a $40,000 balance. DC plans are alleged to provide inadequate retirement benefits compared to DB plans.

Patricia Quintannes, representing the Albuquerque Police Department, strongly supports DB pension plans.

Dominick Vigil, representing state correctional officers, strongly supports DB pension benefits. He stressed the low starting pay and that the pension plan is a major incentive. He also opposes the return-to-work provisions that prevent upward mobility of younger employees.

Emily Kane, representing state firefighters, strongly supports the existing DB pension plan. The low pay is a problem, but the pension plan is an incentive to staying on the job and making a career of firefighting. She stated that the return-to-work provisions are not a problem; she is not aware of any firefighter that has ever returned to work after retirement.

Mr. Varela, Jr., a member of the PERA board, strongly supports the DB pension plan and recommends that the plan should be properly supported so that it does not get into trouble.

The task force recessed at 4:30 p.m.

Tuesday, October 18

The task force was called to order by Representative Heaton at 9:20 a.m.

Legislative Oversight of Retirement Plans

Mr. Williams made a presentation of three examples of legislative oversight of retirement funds. He noted the following common features of oversight commissions.

- They provide a clearinghouse function for all legislation that impacts retirement funds.
- They perform independent, periodic actuarial evaluation of retirement funds.
- They make routine reports to the legislature concerning investment performance.
- Funding is provided for staff and or consultants from the retirement funds, not the general fund.

The chair requested staff to prepare draft legislation that would create a broad-based New Mexico oversight commission that would have responsibility for all state investment activities.

Representative Larranaga requested that draft legislation include sanctions or remedies for irregularities discovered by such an oversight commission.

Economically Targeted Investments

Robert Jacksha, state investment council (SIC), made a presentation concerning SIC private equity investments and the impact on the New Mexico economy.

Key accomplishments are as follows.

- As of June 30, 2005, SIC has made $78.9 million in private equity investments.
- The SIC investment has been matched by $602.9 million in outside investments.
- 1,114 jobs have been created.
- 28 companies have received financing.
- The companies that received financing make annual purchases of $28.5 million and have an annual payroll of $76.2 million.
- The average salary for the jobs created is $68,438; the average salary for jobs created in New Mexico is $29,597.

Public Records Statutes

Mr. Jacksha made a presentation concerning New Mexico's public records statutes as they relate to investment activities.

Senator Cararro suggested that no change should be made in the New Mexico public records statutes unless and until there is a court challenge regarding the SIC interpretation of "trade secret".

Consolidated Reporting of Investment Performance

Mr. Geisler made a presentation concerning performance benchmarks.

There followed a discussion of comparing New Mexico investment agencies to their peers nationwide.

Mr. Geisler observed that performance may be measured in three ways:

- against passive, sector-specific market indexes;
- against the actuarial target investment return; and
- against peers.

Self-Reporting of Due Diligence Efforts

Mr. Geisler distributed a list of inquiries that the task force might consider sending to the investment agencies, noting that PERA has already responded.

The chair directed that inquiries be sent.

Task Force Discussion of Proposed Legislation

The chair directed staff to draft legislation to continue the work of the task force. The draft should be broad enough to include all investment activities. The draft should also incorporate the inquiries recommended by Mr. Geisler.

Representative Varela requests that staff provide copies of the "state comptroller" legislation that was sponsored by the LFC in 2005.

Senator Cararro recommends that immediate oversight action be taken with respect to the Office of the State Treasurer.

Senator Cararro suggests that the task force investigate all investments in the state including the universities, municipalities and counties.

The chair suggested that there should be legislation that allows for removal from office (with or without pay). Mr. Stovall indicated that the Department of Finance and Administration is examining that issue but is having difficulty with the constitutional nature of the Office of the State Treasurer.

The chair recommended that legal counsel be present at the next meeting to examine the subject of removal from office and oversight of a constitutional officer.

The chair enumerated several topics that have been discussed by the task force, including:

- DC vs. DB;
- age to be eligible for retirement;
- calculation of retirement benefits;
- number of years of service to be eligible for retirement;
- return to work;
- combining ERB and PERA;
- statewide deferred compensation plan; and
- inequities involving employer and employee contributions to the retirement funds.

The chair directed staff to provide copies of the 2005 proposed legislation regarding composition of the retirement boards.

Representative Varela requested PERA to make a presentation concerning deferred compensation.

Other Business

At the request of the chair, Mr. Jacksha provided a synopsis of the Securities and Exchange Commission (SEC) examination of several general investment consultants.

He stated that Wilshire Associates, Callan Associates and New England Pension Consultants have all received letters from the SEC clearing them of any allegations of wrong-doing; however, in some cases, exceptions were noted and the consultants directed to correct the exceptions.

Representative Garcia suggested that, in the future, if there is an SEC investigation, the task force should be advised rather than learning about it from a third party.

Evalynne Hunemuller volunteered to provide a copy of the SEC letter exonerating Wilshire.

The chair requested staff to prepare a thank you letter to JP Morgan for providing lunch.

The task force adjourned at 1:30 p.m.

Revised: November 17, 2005

TENTATIVE AGENDA
for the
SIXTH MEETING
of the
STATE PERMANENT FUND TASK FORCE

November 28-29, 2005
Room 321, State Capitol
Santa Fe

<u>**Monday, November 28**</u>

10:00 a.m. **Call to Order**

10:05 a.m. **Approval of the October 17-18, 2005 Minutes**

10:10 a.m. **Status Report on the Legislative Finance Committee Examination of the State Treasurer's Office**
—Barbara Fava, Managing Director, PFM Asset Management, LLC

11:15 a.m. **Overview of Deferred Compensation Plans**
—Terry Slattery, Public Employees Retirement Association (PERA)
—Kurt Weber, PERA
—JoAnn Garcia, PERA

12:00 noon **Lunch**

1:30 p.m. **Task Force Review of Proposed Legislation**

- Continuation of Task Force
- Creation of Permanent Legislative Oversight Commission
- Changes to the PERA and ERA Board Membership
- Retiree Return-to-Work Provisions
  —Cleo Griffith, Legislative Council Service
- Revision of Public Records Statutes
  —Bob Jacksha, State Investment Counsel (SIC)
  —Adam Levine, SIC

3:30 p.m. **Public Comment**

4:00 p.m. **Recess**

__Tuesday, November 29__

9:00 a.m. **Call to Order**

9:10 a.m. **Task Force Discussion of Potential Changes to Retirement Plans (Not Included in Draft Legislation)**

- conversion from defined benefit to defined contribution and/or introduction of defined contribution as an option
- combining the Education Retirement System and Public Employees Retirement System
- changing the age and/or number of years of service required for normal retirement
- changing the formula for calculating retirement benefits
- changing return-to-work rules
- changing employer and employee plan contributions
- introduction of a statewide deferred compensation plan

12:00 noon **Adjourn**

MINUTES
of the
SIXTH MEETING
of the
STATE PERMANENT FUND TASK FORCE

November 28-29, 2005
State Capitol
Santa Fe

The sixth meeting of the State Permanent Fund Task Force for the 2005 interim was called to order by Representative John A. Heaton, chair, on Monday, November 28, 2005 at 10:10 a.m. at the State Capitol in Santa Fe.

Present
Rep. John A. Heaton, Chair
Sen. John Arthur Smith, Vice Chair
Frank Foy, Education Retirement Board (ERB)
Robert Jacksha, State Investment Council (SIC), for Gary Bland
Sen. Phil A. Griego
Rep. Larry A. Larranaga
Rep. Henry Kiki Saavedra
Terry Slattery, Public Employees Retirement Association (PERA), for Robert Gish
Scott Stovall, Department of Finance and Administration, for James Jimenez
Rep. Luciano "Lucky" Varela

Absent
Sen. Joseph J. Carraro
Rep. Justine Fox-Young
Sen. Carroll H. Leavell

Advisory Members
Rep. Donald E. Bratton
Rep. Miguel P. Garcia
Rep. Kathy A. McCoy
Sen. H. Diane Snyder
Rep. Joe M Stell
Sen. Pete Campos
Sen. Carlos R. Cisneros
Sen. Joseph A. Fidel
Sen. Stuart Ingle
Sen. Leonard Lee Rawson

Staff
David Abbey, Legislative Finance Committee (LFC)
Cleo Griffith, Legislative Council Service (LCS)
Larry Matlock, LCS
Norton Francis, LFC
Greg Geisler, LFC
Stephanie Schardin, LFC
Doug Williams, LCS

Guests
The guest list is in the meeting file.

Monday, November 28

Committee Business

The minutes of the October 17-18, 2005 meeting were approved.

Status Report on the Legislative Finance Committee Examination of the State Treasurer's Office
Barbara Fava, managing director, PFM Asset Management, briefed the task force on the investment practices of the state treasurer's office (STO).

- The STO currently has approximately $5 billion of assets under management.
- The STO invests primarily in federal agency securities and repurchase agreements (REPOS).

Key issues identified include the following.

- Cash flow analysis and forecasting are inadequate.
- The list of approved broker/dealers is insufficient.
- Statutory limits on repurchase agreements create a significant opportunity cost.
- Investment practices limit the number of counterparties that will bid on overnight repurchase agreements.
- Execution of trades in the primary market results in lower returns.
- The investment strategy for the local government investment pool (LGIP) is more aggressive than what is permitted for registered money market mutual funds.
- The state maintains significant deposit balances that earn little or no interest.
- Indirect and "soft dollar" costs are not fully disclosed.
- There are inadequate credit standards for certain investments.
- There is no performance benchmarking.
- The investment policy should be updated to reflect "best practices" and appropriate diversification requirements.

Recommendations include the following.

- Expand approved broker/dealer list, considering financial strength, business lines, pricing and operational capabilities.
- Allow, but don't mandate, on-line trading.
- Require competitive shopping on all trades, but allow flexibility for different markets, e.g., direct purchase of commercial paper.
- Revise statute to allow federal agency obligations as collateral on repurchase agreements.
- Use flexible repurchase agreements for accounts with uncertain cash flows, but only when yield is greater than yields on "bullet" securities.
- Set maximum placement fees in accordance with IRS safe harbor rules for broker commissions under U.S. Treasury regulation 1.148-5(e)(2)(iii)(B)(1).
- Revise statute to allow delivery of collateral to an independent third party custodian under a triparty agreement.
- Expand list of approved repurchase counterparties using strict capital and credit standards.
- Allow counterparties to bid on a portion of the overnight repurchase agreements instead of requiring that firms bid on the entire balance.

- Purchase new issue agency obligations only when it is not possible to purchase a similar security in the secondary market.
- Follow operating practices (average maturity, diversification and liquidity) of money market mutual funds (rule 2a-7 of the Investment Company Act of 1940).
- Require that the LGIP obtain a "AA" or "AAA" rating from a nationally recognized statistical rating organization.
- Evaluate both direct and indirect costs when evaluating investment and deposit options.
- Consider soft dollar and other indirect costs as part of the treasurer's annual budget review.

With respect to the purchase of "new issue" federal agency securities, Ms. Fava noted that brokerage fees are significantly higher than purchasing on the secondary market.

Representative Varela asked if the STO paid the fees directly. Ms. Fava said that the premium paid for new issue securities is reflected in the lower yield that is received. The STO does not actually pay a fee; rather, it receives less than it could if securities were purchased in the secondary market.

Representative Larranaga asked if this arrangement could lead to abuse of the system. Ms. Fava responded that it could, because it is the issuer of the security who is paying the broker (approximately 0.10 percent), not the STO. Total estimated "soft costs" incurred by the STO are $1.725 million per year.

Representative Larranaga asked if any of the recommendations are being adopted by the STO. Doug Brown, acting state treasurer, responded that all of the recommendations are being implemented. He estimates that only five to ten percent of the recommendations require a change in the law. Also, he cautioned that changes must be made thoughtfully, so as not to inadvertently restrict the STO.

Mr. Brown concluded by suggesting that the STO report to a board of directors to the extent that this is constitutionally possible. Specifically, he recommends that the STO report to the State Board of Finance.

Ms. Fava said she would send her recommendations to the task force grouped according to those items that require legislative action and those that may be implemented through internal STO policy (see attachment A).

Overview of Deferred Compensation Plans

Terry Slattery introduced Kurt Weber of PERA and Jim Keeler of Nationwide Retirement Solutions, who made a presentation concerning the existing Deferred Compensation Plan (DCP). A brief history of DCP is as follows.

- In the early 1980s, DCPs were primarily offered and administered by insurance companies.
- Plans generally consisted of whole life insurance and annuities.
- Plans were "bundled", meaning that plan administration and sales of products were performed by one company.

- In 1997, PERA "unbundled" its DCP and converted to direct mutual fund investments, a separate investment advisor was hired and plan administration counselors began receiving a salary instead of commissions.
- The plan qualifies as an IRS 457 plan.

Current plan options are as follows.

- Portfolios are designed to assist participants with diversification in their accounts.
- Portfolios are custom-designed, utilizing funds from the core investment options.
- Portfolios are professionally managed and rebalanced by an investment consultant.
- A self-directed mutual fund became available in February 2005.
- A plan loan program was implemented in October 2004.
- Participants can utilize DCP funds for the purchase of service credit.
- Participants can roll over funds from other 457(b), 401(k), 403(b), 401(a) and IRA plans.
- Funds are accessible upon separation from service or for an unforeseeable emergency.

Representative Larranaga noted that the 13,000 DCP participants include state, county, municipal and school employees; therefore, less than a majority of all eligible employees are participating. Mr. Keeler responded that approximately 42 percent of eligible employees are participating. Mr. Weber observed that, in some cases, DCP competes with other employee investment options. For example, teachers have the option of a 403(b) plan.

Representative Heaton suggested that ERB should explain why the 457 DCP has not been adopted statewide and proposed that a memorial be introduced urging ERB to standardize teacher options around the 457 DCP.

Representative Heaton requested that Frank Foy discuss this recommendation with the ERB board.

Task Force Review of Proposed Legislation

Cleo Griffith reviewed draft legislation that has been requested by the task force.

Regarding the creation of a permanent interim oversight committee, the chair asked if the task force was in concurrence. Senator Smith said that there are already a lot of interim committees. Representative Saavedra said he thought it was important to retain the expertise of the investment agencies, which is not possible if the task force is converted to a legislative committee. Representative Bratton suggested retention of the task force rather than creation of an interim committee, but he recommends that the task force be made permanent, as opposed to needing annual renewal. Representative Larranaga said that task forces generally are not permanent, but it would be appropriate to add nonvoting, ex-officio members to a legislative committee. Mr. Foy said that it has been very helpful to be an equal member of the task force, rather than merely testifying before a committee. Bob Jacksha agreed with Mr. Foy but said he would be comfortable being an ex-officio, nonvoting member.

The task force agreed to endorse the creation of a permanent oversight committee, with the investment agencies serving as nonvoting members. The new committee would consist of five members from the house and five from the senate. Also, four designees from the house and four from the senate would be appointed. Members would be appointed by the leadership of both bodies, rather than by the legislative council.

With respect to the duties of the new committee, Representative Larranaga suggested that the language regarding reporting be strengthened, and Mr. Jacksha suggested that reports should be made to investment agency boards of directors.

Ms. Griffith noted that the proposed legislation would probably not be germane during the 2006 legislative session. Representative Varela requested that Olivia Padilla-Jackson, DFA, contact the governor's office for the purpose of sending the bill to the legislature with a message. Ms. Padilla-Jackson agreed. Representative Heaton will introduce the bill.

On the subject of ERB board membership, Ms. Griffith reviewed HB 330 and SB 194 from the 2005 session. Representative Varela suggested that the task force work with the Legislative Education Study Committee, the LFC, the House Labor and Human Resources Committee, the House Education Committee and the Senate Finance Committee to develop a consensus bill.

Representative Larranaga made a motion to adopt the draft legislation regarding the ERB board. The task force adopted the draft bill. Representative Varela will introduce the bill.

The task force did not endorse legislation that would change the PERA board.

On the subject of return-to-work provisions, Ms. Griffith reviewed HB 207, SB 216 and SB 875 from the 2005 session. Representative Varela asked Mr. Slattery if PERA would support a change in the layout period. Mr. Slattery said PERA would support a 12-month layout period and a $30,000 trigger for the employee to begin making retirement contributions. This is essentially SB 875.

William Fulginetti of the New Mexico Municipal League suggested that municipalities should have to pass a resolution authorizing return to work for their retired employees. This would involve a transparent process that would allow for public input. Representative Larranaga recommended that school boards should also have to adopt such a resolution.

Representative Varela suggested that both ERB and PERA retirees should have to start contributing to the retirement system when they earn more than $30,000 per year and that pension benefits be suspended when they earn more than $50,000 per year.

Revision of Public Records Law

Mr. Jacksha discussed the California public records law and suggested that the California statute would be appropriate for New Mexico, with the addition of a paragraph concerning SIC's direct investments.

Mr. Jacksha noted that it may be inappropriate, at the present time, to introduce a change in the public records law.

Robert Johnson, representing the Foundation for Open Government, opposes a change in the public records law at the present time and urges a cooperative approach to any proposed change, including public hearings.

Mr. Jacksha also discussed the existing film production tax credit and loan program. Specifically, he referenced Subsection D of Section 7-27-5.26 NMSA 1978, noting that by placing this 2005 session language within the body of the existing law, there was an unintended consequence. SIC is recommending moving Subsection D to its own new section in Chapter 7.

Representative Varela requested that SIC work with LCS staff to develop a bill that would accomplish the required technical change.

Public Comment

Rick Mack, City of Albuquerque board member, observed that some retirees are circumventing the layout provisions by returning to work as contractors.

Carter Bundy of the American Federation of State, County and Municipal Employees (AFSCME) said that the current return-to-work provisions create a morale problem.

The task force adjourned at 3:50 p.m.

Tuesday, November 29

The task force was called to order by Representative Heaton at 9:10 a.m.

Recap of Proposed Legislation

Representative Heaton reviewed the items that were agreed to by the task force on Monday. The list is as follows.

(1) Changes to ERB board

- Adds three new board members, all of whom must have at least 10 years investment or public finance experience:
  one appointed by the governor;
  one appointed by the New Mexico Council of University Presidents; and
  one appointed by the New Mexico Coalition of School Administrators.

(2) Creation of "state investment and retirement systems oversight committee"

- 10 voting members: five from the house and five from the senate.
  eight designees (to substitute for absent voting members): four from the house and four from the senate.
  five nonvoting members: one representative each from SIC, PERA, ERB, DFA and the state treasurer's office.
- Powers and duties to include making findings and referring matters needing attention to the appropriate public official, agency, oversight board or the attorney general for investigation, corrective action and penalties if warranted.

(3) Revisions to return to work

- Both PERA and ERB will have a 12-month layout from employment, including employment as an independent contractor. (A three-year exception will allow reemployment after a 90-day layout for peace officers and water and wastewater facility officers, if the employer is a municipality with less than 10,000 people or a county with less than 30,000 people.)

- Both PERA and ERB will require a return-to-work retiree to make employee contributions once annual earnings exceed $30,000. Eliminate the 2006 sunset of this requirement for PERA.
- Both PERA and ERB return-to-work retirees will have pension benefits suspended once annual earnings exceed $50,000.
- Both PERA and ERB return-to-work retirees will have pension benefits suspended once they complete three years of work. After three years, the retiree reenters the system and retirement benefits will be recomputed when the retiree eventually ceases to work.
- Requirement that local governing body of municipality or county or local school board must formally adopt resolution approving hiring of return-to-work retirees, with notice and public comment opportunity.

(4) Elimination of return to work for both PERA and ERB, effective July 1, 2006

(5) Revision of film production tax credit loan legislation to clarify that these loans are not subject to the requirements of Section 7-27-5.26 NMSA 1978.

On the subject of return-to-work legislation, Senator Smith expressed concern about the actuarial soundness of the retirement funds and said that he is reluctant to move forward with the return-to-work provisions. Representative Larranaga noted that the action of the task force does nothing to harm the retirement funds; indeed, by requiring an employee contribution, the proposed legislation will help the retirement funds.

Representative Heaton asked if a retiree should receive enhanced pension benefits when the retiree begins contributing to the pension fund after return to work. Representative Larranaga said that would require restructuring of the pension benefit formula. Evalynne Hunemuller, ERB, said that there could be a legal challenge from retirees who are required to make non-refundable contributions. Senator Smith said that if such a challenge were to be made, the legislature would probably terminate the program.

Mr. Slattery recommended that the dollar limitations associated with return to work be discarded in favor of an hourly limitation. Moreover, PERA participating employers are not currently paying the employer share, because computer systems cannot calculate the employer contribution absent an employee contribution.

Senator Smith suggested that the ultimate solution is to terminate the entire return-to- work program. Representative Larranaga recommends elimination of the program, effective July 1, 2006. Representative Heaton asked the task force if the members want any bill at all on the subject of return to work. Senator Smith said that a sunset date should be created for PERA, as there is for ERB (2012).

Representative Heaton suggested building disincentives into the program. He proposed that counties and municipalities pay both the employee and employer share of retirement. Representative Heaton suggested that a retiree who returns to work only be allowed to work for three years before pension benefits are suspended. At that point, the retiree would reenter the retirement system and begin accruing service credit. When the retiree eventually stops working, the pension benefit would be recomputed and the retiree would not be allowed to return to work again.

The task force discussed the option of creating a "drop program". Such a program would involve an employee retiring on paper and continuing to work for a maximum of three to five years without receiving pension benefits. During this period, the employee and employer would contribute to a DCP account. In addition, the retirement benefit that would otherwise be paid would be added to the DCP.

Representative Garcia noted that there is a problem with teacher skill distribution, i.e., in poor communities, there is a shortage of teachers with master's degrees.

The task force endorsed legislation that would provide for a uniform 12-month layout period, require an employee to begin making contributions when the employee's salary exceeds $25,000, cause pension benefits to be suspended when the employee's salary exceeds $50,000 and require municipal, county and school governing bodies to adopt a resolution authorizing return to work. Representative Heaton will introduce the bill.

The task force also endorsed separate legislation that would terminate the entire return-to-work program on July 1, 2006. Senator Smith and Representative Larranaga will sponsor the bill.

On the subject of film production loans, the task force endorsed legislation that would make a technical correction to Chapter 7 NMSA 1978. Senator Griego and Representative Varela will introduce the bill.

Task Force Discussion of Potential Changes to Retirement Plans

Representative Heaton reviewed the following items.

- Conversion from defined benefit to defined contribution retirement plans. There was no interest on the part of the task force with respect to sponsoring legislation.
- Combining ERB and PERA retirement systems. There was no interest on the part of the task force with respect to sponsoring legislation. Representative Garcia suggested that this is a subject that might be explored by the task force during the 2006 interim.
- Changing the age and/or number of years required to qualify for retirement. Representative Heaton and Representative Bratton are in favor of raising the retirement age. Representative Saavedra indicated that there is a lack of communication with rank-and-file teachers. They are not adequately informed about problems confronting the retirement systems and the actions of the legislature. Representative Heaton recommended 30 years of service at any age and the Rule of 80 as requirements for normal retirement. Senator Griego asked if the task force will receive an actuarial assessment associated with increasing the retirement age. The task force endorsed draft legislation. Senator Smith will introduce the bill.

- Changing ERB and PERA employer and employee contribution rates. The task force endorsed draft legislation that would link employee contributions to salary increases. Representative Heaton will introduce the bill.
- Creation of a statewide DCP. Mr. Foy indicated that he would confer with PERA on the subject of educating teachers about participating in the existing PERA DCP.
- The task force did not endorse legislation requiring the reporting of contributions to state employees on the part of companies that contract with the investment agencies.
- The task force discussed the subject of making a lump-sum, one-time general fund transfer to the severance tax permanent fund (STPF) and/or the retirement funds. Representative Larranaga said he will sponsor a bill transferring $100 million from the general fund to the STPF. The task force endorsed a memorial that would prohibit the legislature from sweeping excess severance tax collections. Representative Heaton will introduce the memorial.

Representative Heaton requested that staff include these items on the agenda for the 2006 interim.

Other Business

There was no other business brought before the task force.

The task force adjourned at 12:00 noon.

Attachment A

New Mexico Legislative Finance Committee
Review of State Treasury Investment Practices
Summary of Recommendations

Legislative

- Revise statute to allow federal agency obligations as collateral on repurchase agreements.

- Revise statute to allow delivery of repurchase agreement collateral to an independent third-party custodian under a triparty agreement.
- Require that the LGIP obtain and maintain a "AA" or "AAA" rating from a nationally recognized statistical rating organization.

Budget

- Consider soft dollar and other indirect costs (specifically, bank earnings credits and investment advisory/bidding fees) as part of the treasurer's annual budget review.

Policy

- Expand the approved broker/dealer list using financial strength, business lines, pricing and operational capabilities as criteria for the selection of trading partners.
- Allow, but don't mandate, on-line trading.
- Use flexible repurchase agreements for accounts with uncertain cash flows or volatility constraints (such as bond proceeds).
- Set maximum flex REPO placement fees in accordance with IRS GIC Safe Harbor Rules for Broker Commissions under U.S. Treasury Regulation § 1.148-5(e)(2)(iii)(B)(1).
- Expand the list of approved REPO counterparties using strict capital and credit standards.

- Purchase new issue agency obligations only when it is not possible to purchase a similar security in the secondary market.
- Follow operating practices (average maturity, diversification and liquidity) required for money market mutual funds (Rule 2a-7 of the Investment Company Act of 1940).
- Establish minimum capital adequacy and rating requirements for REPO counterparties.
- Limit corporate note purchases to firms rated AA or higher by all rating agencies that rate the issuer at the time of purchase.
- Establish performance benchmarks and require periodic reporting of performance. (Compare short-term, liquid funds to a "simple interest" benchmark. Compare longer-term funds to a duration matched benchmark on a total return basis.)
- Require that disclosure of financial interests (as currently required by the policy) be submitted to the STIC or a state ethics board instead of to the state treasurer.
- Expand criteria for short-term REPO counterparties to include a minimum short-term or counterparty credit rating.
- Add issuer diversification limits:
- 25 to 35 percent per federal agency;
- 25 percent per REPO counterparty; and
- 5 percent per corporate issuer.

- Require that securities meet minimum credit rating requirements by all rating agencies (no split-rated paper).
- Allow the treasurer to engage a registered investment advisor to provide investment advisory services and/or manage a portion of the portfolio.

Procedure

- Perform cash flow forecast and target investments to cover known disbursements.
- Require competitive shopping on all trades, but allow flexibility for different markets, i.e., direct purchase of commercial paper.
- Allow counterparties to bid on a portion of the overnight REPO instead of requiring that firms bid on the entire balance.
- Evaluate both direct and indirect costs when evaluating investment and deposit options.

Transmitted by:
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Appendix C

Draft Legislation Endorsed by the Task Force

HOUSE BILL

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

FOR THE STATE PERMANENT FUND TASK FORCE AND THE LEGISLATIVE FINANCE COMMITTEE

AN ACT

RELATING TO EDUCATION; EXPANDING THE MEMBERSHIP OF THE EDUCATIONAL RETIREMENT BOARD; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1. Section 22-11-3 NMSA 1978 (being Laws 1967, Chapter 16, Section 127, as amended) is amended to read:

"22-11-3. EDUCATIONAL RETIREMENT BOARD--MEMBERS--TERMS--VACANCIES.--

A. The "educational retirement board" is created.

B. The board shall be composed of [~~seven~~] ten members, consisting of the following:

(1) the [~~superintendent~~] secretary of public [~~instruction~~] education;

(2) the state treasurer;

underscored material = new
[~~bracketed material~~] = delete

(3) one member to be elected for a term of four years by members of the New Mexico association of educational retirees;

(4) one member to be elected for a term of four years by the members of the New Mexico education association;

(5) one member to be elected for a term of four years by the New Mexico members of the American association of university professors; [~~and~~]

(6) two members to be appointed by the governor for terms of four years each;

(7) one member to be appointed by the governor for a term of four years who possesses at least ten years of investment or public finance experience;

(8) one member to be appointed by the university presidents' council for a term of four years who possesses at least ten years of investment or public finance experience; and

(9) one member to be appointed by the New Mexico coalition of school administrators for a term of four years who possesses at least ten years of investment or public finance experience.

[~~C. In the initial composition of the board, the member elected by the members of the American association of university professors shall serve for a term of three years;~~

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underscored material = new
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~~one member appointed by the governor shall serve for a term of two years; and the other member appointed by the governor shall serve for a term of one year.~~

~~D. Vacancies occurring in the term of office of those members appointed by the governor or elected by an association shall be filled either by the governor appointing or the association electing a new member to fill the unexpired term.~~]

C. A vacancy occurring in the term of an appointed member shall be filled by the appointing authority for the unexpired term. A vacancy occurring in the term of an elected member shall be filled by the appropriate association electing a new member to fill the unexpired term."

HOUSE BILL

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

FOR THE STATE PERMANENT FUND TASK FORCE

AN ACT

RELATING TO RETURN TO EMPLOYMENT; PROVIDING ADDITIONAL CONDITIONS FOR RETURN TO EMPLOYMENT AFTER JUNE 30, 2006 PURSUANT TO THE PUBLIC EMPLOYEES RETIREMENT ACT AND THE EDUCATIONAL RETIREMENT ACT; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2003; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2004 BY REPEALING LAWS 2004, CHAPTER 2, SECTION 1.

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

Section 1. Section 10-11-8 NMSA 1978 (being Laws 1987, Chapter 253, Section 8, as amended by Laws 2004, Chapter 2, Section 1 and by Laws 2004, Chapter 68, Section 4) is amended to read:

"10-11-8. NORMAL RETIREMENT--RETURN TO EMPLOYMENT--BENEFITS CONTINUED <u>FOR CERTAIN MEMBERS</u>--EMPLOYER CONTRIBUTIONS.--

underscored material = new
~~[bracketed material]~~ = delete

A. A member may retire upon fulfilling the following requirements prior to the selected date of retirement:

(1) a written application for normal retirement, in the form prescribed by the association, is filed with the association;

(2) employment is terminated with all employers covered by any state system or the educational retirement system;

(3) the member selects an effective date of retirement that is the first day of a calendar month; and

(4) the member meets the age and service credit requirement for normal retirement specified in the coverage plan applicable to the member.

B. The amount of normal retirement pension is determined in accordance with the coverage plan applicable to the member.

C. Except as provided in Subsection [~~D or~~] E or F of this section, a retired member may be subsequently employed by an affiliated public employer prior to July 1, 2006 if the following conditions apply:

(1) the member has not been employed as an employee of an affiliated public employer for at least ninety consecutive days from the date of retirement to the commencement of employment or reemployment with an affiliated public employer. If the retired member returns to employment without first completing ninety consecutive days of

retirement:

(a) the retired member's pension shall be suspended immediately and the previously retired member shall become a member; and

(b) upon termination of the subsequent employment, the previously retired member's pension shall be calculated pursuant to Paragraph (2) of Subsection [~~E~~] H of this section;

(2) effective the first day of the month following the month in which the retired member's earnings total twenty-five thousand dollars ($25,000) during a calendar year, a retired member who returns to employment shall be required to make contributions to the fund as specified in the Public Employees Retirement Act; provided, however, that after December 31, 2006, no additional contributions shall be required pursuant to this paragraph;

(3) until the subsequent employment is terminated, the affiliated public employer that employs the retired member shall make contributions to the fund in the amount specified in the Public Employees Retirement Act or in a higher amount adjusted for full actuarial cost as determined annually by the association; and

(4) a retired member who returns to employment during retirement pursuant to this subsection is entitled to receive retirement benefits but is not entitled to acquire

service credit or to acquire or purchase service credit in the future for the period of the retired member's reemployment with an affiliated public employer.

D. Except as provided in Subsection E or F of this section, a retired member may be subsequently employed by an affiliated public employer on or after July 1, 2006 if the following conditions apply:

(1) if the affiliated public employer is a local governing body, it has adopted by resolution a policy approving the employment or reemployment of retired members;

(2) the member has not been employed as an employee or independent contractor of an affiliated public employer:

(a) for at least twelve consecutive months from the date of retirement to the commencement of employment or reemployment with an affiliated public employer; or

(b) for at least ninety consecutive days from the date of retirement to the commencement of employment or reemployment with an affiliated public employer that is a municipality with a population of less than ten thousand persons or a county with a population of less than thirty thousand persons if the member is receiving the maximum pension under the member's applicable coverage plan and returns to employment as a peace officer or water or wastewater facility

underscored material = new
~~[bracketed material]~~ = delete

operator;

(3) if a retired member returns to employment without first completing the period of retirement required pursuant to Paragraph (2) of this subsection:

(a) the retired member's pension shall be suspended immediately and the previously retired member shall become a member; and

(b) upon termination of the subsequent employment, the previously retired member's pension shall be calculated pursuant to Paragraph (2) of Subsection H of this section;

(4) effective the first day of the month following the month in which the retired member's earnings from subsequent employment total thirty thousand dollars ($30,000) during a calendar year, the retired member shall be required to make contributions to the fund as specified in the Public Employees Retirement Act;

(5) until the subsequent employment is terminated, the affiliated public employer that employs the retired member shall make contributions to the fund in the amount specified in the Public Employees Retirement Act or in a higher amount adjusted for full actuarial cost as determined annually by the association; and

(6) a retired member who returns to employment during retirement pursuant to this subsection is entitled to

underscored material = new
[~~bracketed material~~] = delete

receive retirement benefits but is not entitled to acquire service credit or to acquire or purchase service credit in the future for the period of the retired member's reemployment with an affiliated public employer.

[~~D.~~] E. The provisions of Paragraphs (2) and (3) of Subsection C of this section that require employee or employer contributions do not apply to:

(1) a retired member who is appointed chief of police of an affiliated public employer, other than the affiliated public employer from which the retired member retired, or who is appointed undersheriff; provided that:

(a) the retired member files an irrevocable exemption from membership with the association within thirty days of appointment;

(b) each sheriff's office shall be limited to one undersheriff qualifying pursuant to this paragraph;

(c) the irrevocable exemption shall be for the chief of police's or the undersheriff's term of office; and

(d) filing an irrevocable exemption shall irrevocably bar the retired member from acquiring service credit for the period of exemption from membership; or

(2) a retired member employed by the legislature for legislative session work.

[~~E.~~] F. At any time during a retired member's subsequent employment pursuant to Subsection C or D of this section, the retired member may elect to suspend the pension. [~~When the pension is suspended, the following conditions shall apply~~]

G. The pension of a retired member who is subsequently employed by an affiliated public employer on or after July 1, 2006 shall be suspended the first day of the month following the month in which:

(1) the retired member's earnings for a calendar year from subsequent employment exceed fifty thousand dollars ($50,000); or

(2) the retired member completes a total of thirty-six months of subsequent employment by one or more affiliated public employers.

H. When a retired member's pension is suspended pursuant to the provisions of Subparagraph (a) of Paragraph (1) of Subsection C of this section, Subparagraph (a) of Paragraph (3) of Subsection D of this section or Subsection F or G of this section, the following conditions shall apply:

(1) the retired member who is subsequently employed by an affiliated public employer shall become a member. The previously retired member and the subsequent affiliated public employer shall make the required employee and employer contributions, and the previously retired member shall accrue service credit for the period of subsequent employment;

and

(2) when a previously retired member terminates the subsequent employment with an affiliated public employer, [~~he~~] the previously retired member shall retire according to the provisions of the Public Employees Retirement Act, subject to the following conditions:

(a) payment of the pension shall resume in accordance with the provisions of Subsection A of this section;

(b) unless the previously retired member accrued at least three years of service credit on account of the subsequent employment, the recalculation of pension shall: 1) employ the form of payment selected by the previously retired member at the time of the first retirement; and 2) use the provisions of the coverage plan applicable to the member on the date of the first retirement; and

(c) the recalculated pension shall not be less than the amount of the suspended pension.

[~~F.~~] I. The pension of a member who has three or more years of service credit under each of two or more coverage plans shall be determined in accordance with the coverage plan that produces the highest pension. The pension of a member who has service credit under two or more coverage plans but who has three or more years of service credit under only one of those coverage plans shall be determined in accordance with the

underscored material = new
[~~bracketed material~~] = delete

coverage plan in which the member has three or more years of service credit. If the service credit is acquired under two different coverage plans applied to the same affiliated public employer as a consequence of an election by the members, adoption by the affiliated public employer or a change in the law that results in the application of a coverage plan with a greater pension, the greater pension shall be paid a member retiring from the affiliated public employer under which the change in coverage plan took place regardless of the amount of service credit under the coverage plan producing the greater pension; provided the member has three or more years of continuous employment with that affiliated public employer immediately preceding or immediately preceding and immediately following the date the coverage plan changed. The provisions of each coverage plan for the purpose of this subsection shall be those in effect at the time the member ceased to be covered by the coverage plan. "Service credit", for the purposes of this subsection, shall be only personal service rendered an affiliated public employer and credited to the member under the provisions of Subsection A of Section 10-11-4 NMSA 1978. Service credited under any other provision of the Public Employees Retirement Act shall not be used to satisfy the three-year service credit requirement of this subsection."

Section 2. Section 22-11-25.1 NMSA 1978 (being Laws 2001, Chapter 283, Section 2, as amended by Laws 2003, Chapter 80, Section 1 and by Laws 2003, Chapter 145, Section 1) is amended to read:

"22-11-25.1. RETURN TO EMPLOYMENT--BENEFITS CONTINUED--ADMINISTRATIVE UNIT CONTRIBUTIONS.--

A. Except as provided in Subsections B, [~~and E~~] F and G of this section, beginning January 1, 2002 and continuing until January 1, 2012, a retired member may begin employment at a local administrative unit and shall not be required to suspend retirement benefits if the member has not been employed as an employee or independent contractor by a local administrative unit for at least twelve consecutive months from the date of retirement to the commencement of employment or reemployment with a local administrative unit. If the retired member returns to employment without first completing twelve consecutive months of retirement, the retired member shall remove himself from retirement.

B. Except as provided in Subsection G of this section, a retired member who was retired on or before January 1, 2001, has not since suspended or been required to suspend retirement benefits pursuant to the Educational Retirement Act and is reemployed by a local administrative unit may continue employment at the local administrative unit and shall not be required to suspend retirement benefits.

C. Except as provided in Subsection G of this section, a retired member who returns to employment during retirement

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[~~bracketed material~~] = delete

pursuant to Subsection A, [~~or~~] B or F of this section is entitled to continue to receive retirement benefits but is not entitled to acquire service credit or to acquire or purchase service credit in the future for the period of the retired member's reemployment with a local administrative unit.

D. A retired member who returns to employment prior to July 1, 2006 pursuant to [~~Subsections~~] Subsection A, [~~or~~] B or F of this section shall not make contributions to the fund as specified in the Educational Retirement Act; however, the local administrative unit's contributions as specified in that act shall be paid to the fund as if the retired member was a non-retired employee.

E. A retired member who returns to employment on or after July 1, 2006 pursuant to the provisions of this section shall make contributions to the fund as specified in the Educational Retirement Act effective the first day of the month following the month in which the retired member's earnings total thirty thousand dollars ($30,000) during a calendar year. The local administrative unit's contributions as specified in the Educational Retirement Act shall be paid at all times to the fund as if the retired member was a non-retired employee.

[~~E.~~] F. Except as provided in Subsection G of this section, beginning July 1, 2003 and continuing until January 1, 2012, a retired member who retired on or before January 1, 2001 and who has not been employed as an employee or independent

underscored material = new
[~~bracketed material~~] = delete

contractor by a local administrative unit for at least ninety days may begin employment at a local administrative unit without suspending retirement benefits if the retired member was not employed by a local administrative unit for an additional twelve or more consecutive months after the initial date of the retirement; provided that the ninety-day period shall not include any part of a summer or other scheduled break or vacation period.

G. A retired member who returns to employment on or after July 1, 2006 pursuant to the provisions of this section shall remove himself from retirement effective the first day of the month following the month in which:

(1) the retired member's earnings from return to employment total fifty thousand dollars ($50,000); or

(2) the retired member completes a total of thirty-six months of return to employment with one or more local administrative units.

H. Effective July 1, 2006, a retired member may not begin employment at a local administrative unit pursuant to the provisions of this section unless the local administrative unit has adopted by resolution a policy approving the employment or reemployment of retired members."

Section 3. REPEAL.--Laws 2004, Chapter 2, Section 1 is repealed.

HOUSE BILL

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

AN ACT

CREATING A JOINT INTERIM LEGISLATIVE COMMITTEE TO OVERSEE STATE INVESTMENTS AND RETIREMENT SYSTEMS; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Section 1. STATE INVESTMENT AND RETIREMENT SYSTEMS OVERSIGHT COMMITTEE CREATED.--The "state investment and retirement systems oversight committee" is created as a joint interim legislative committee.

Section 2. MEMBERSHIP--APPOINTMENT--VACANCIES.--

A. The state investment and retirement systems oversight committee shall be composed of ten voting members and five nonvoting members.

B. Five members of the house of representatives shall be appointed as voting members of the committee by the speaker of the house of representatives, and five members of the senate shall be appointed as voting members of the committee by the committees' committee of the senate or, if the senate appointments are made in the interim, by the president pro tempore of the senate after consultation with and agreement of a majority of the members of the committees' committee. Members shall be appointed from each house so as to give the two major political parties in each house the same proportionate representation on the committee as prevails in each house. An appointed member may designate a legislator from the member's party to serve in the member's place at a committee meeting at which the member is going to be absent. The member shall select the designee from a list of four potential designees from each house, appointed in the same manner as the appointment of the members.

C. The five nonvoting members of the board shall be: the state investment officer or the officer's designee; the secretary of finance and administration or the secretary's designee; the state treasurer or the treasurer's designee; the investment director of the public employees retirement association or the director's designee; and the chief investment officer of the educational retirement board or the officer's designee.

D. Vacancies on the committee shall be filled by appointment in the same manner as the original appointments.

The speaker of the house of representatives and the president pro tempore of the senate shall each designate one co-chair of the committee.

E. No action shall be taken by the committee if a majority of the total membership from either house on the committee rejects such action.

Section 3. POWERS AND DUTIES.--After its appointment, the state investment and retirement systems oversight committee shall hold one organizational meeting to develop a work plan and budget for the ensuing interim. The work plan and budget shall be submitted to the New Mexico legislative council for approval. Upon approval of the work plan and budget by the legislative council, the committee shall:

A. monitor and oversee the investment and financial management practices used by the state investment council, the state board of finance and the state treasurer with respect to all public funds, including the permanent funds, and the investment practices used by the public employees retirement association and the educational retirement board with respect to their retirement funds;

B. undertake a continuing analysis of the financial and actuarial status of the retirement systems, including the benefit structure, of the public employees retirement association and the educational retirement board;

C. develop recommendations as appropriate to improve state investment practices and to ensure the financial and actuarial soundness of the retirement funds;

D. make referrals of matters needing further attention to the appropriate public official, agency, oversight board or the attorney general for investigation, corrective action and penalties if warranted;

E. request that all proposed legislation affecting state investment practices, the permanent funds or the retirement funds be presented to the committee for review and analysis in the interim prior to the legislative session in which the legislation will be introduced; and

F. report to the legislature prior to the start of each regular legislative session any recommendations that the committee may have for legislative action.

Section 4. ASSISTANCE TO COMMITTEE.--The public employees retirement association, the educational retirement board, the state investment council, the department of finance and administration and the state treasurer shall assist the committee in the performance of its duties and shall make available records and information requested.

Section 5. STAFF.--The staff for the state investment and retirement systems oversight committee shall be provided by the legislative council service, but actuarial and other outside consultants are authorized as necessary to assist the committee in carrying out its duties.

Section 6. APPROPRIATION.--One hundred fifty thousand dollars ($150,000) is appropriated from the general fund to the legislative council service for expenditure in fiscal years 2006 and 2007 for the purpose of paying for technical and legal assistance and actuarial and other outside consultants to assist the state investment and retirement systems oversight committee, for necessary equipment and supplies used in carrying out the provisions of this act and for reimbursing the per diem and mileage expenses of the committee. Any unexpended or unencumbered balance remaining at the end of fiscal year 2007 shall revert to the general fund. Payments from the appropriation shall be made upon vouchers signed by the director of the legislative council service or the director's authorized representative.

Section 7. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

SENATE BILL

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

FOR THE STATE PERMANENT FUND TASK FORCE AND
THE LEGISLATIVE FINANCE COMMITTEE

AN ACT

RELATING TO EDUCATION; EXPANDING THE MEMBERSHIP OF THE EDUCATIONAL RETIREMENT BOARD; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1. Section 22-11-3 NMSA 1978 (being Laws 1967, Chapter 16, Section 127, as amended) is amended to read:

"22-11-3. EDUCATIONAL RETIREMENT BOARD--MEMBERS--TERMS--VACANCIES.--

A. The "educational retirement board" is created.

B. The board shall be composed of [~~seven~~] ten members, consisting of the following:

(1) the [~~superintendent~~] secretary of public [~~instruction~~] education;

(2) the state treasurer;

underscored material = new
[~~bracketed material~~] = delete

(3) one member to be elected for a term of four years by members of the New Mexico association of educational retirees;

(4) one member to be elected for a term of four years by the members of the New Mexico education association;

(5) one member to be elected for a term of four years by the New Mexico members of the American association of university professors; [~~and~~]

(6) two members to be appointed by the governor for terms of four years each;

(7) one member to be appointed by the governor for a term of four years who possesses at least ten years of investment or public finance experience;

(8) one member to be appointed by the university presidents' council for a term of four years who possesses at least ten years of investment or public finance experience; and

(9) one member to be appointed by the New Mexico coalition of school administrators for a term of four years who possesses at least ten years of investment or public finance experience.

[~~C. In the initial composition of the board, the member elected by the members of the American association of university professors shall serve for a term of three years;~~

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~~one member appointed by the governor shall serve for a term of two years; and the other member appointed by the governor shall serve for a term of one year.~~

~~D. Vacancies occurring in the term of office of those members appointed by the governor or elected by an association shall be filled either by the governor appointing or the association electing a new member to fill the unexpired term.~~]

C. A vacancy occurring in the term of an appointed member shall be filled by the appointing authority for the unexpired term. A vacancy occurring in the term of an elected member shall be filled by the appropriate association electing a new member to fill the unexpired term."

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.159719.1

HOUSE BILL

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

FOR THE STATE PERMANENT FUND TASK FORCE

AN ACT

RELATING TO PUBLIC FINANCE; RECODIFYING AUTHORIZATION FOR THE STATE INVESTMENT OFFICER TO MAKE LOANS TO FILM PRODUCTION COMPANIES BASED ON EXPECTED FILM PRODUCTION TAX CREDITS; AMENDING PROVISIONS RELATING TO INVESTMENT IN NEW MEXICO FILM PROJECTS; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2005.

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

Section 1. Section 7-2C-2 NMSA 1978 (being Laws 1985, Chapter 106, Section 2, as amended) is amended to read:

"7-2C-2. PURPOSE.--

A. The purpose of the Tax Refund Intercept Program Act is to comply with state and federal law:

(1) by enhancing the enforcement of child support and medical support obligations;

(2) to aid collection of outstanding debts owed for overpayment of public assistance and overissuance of food stamps and overpayment of unemployment compensation benefits and nonpayment of contributions or payments in lieu of contributions or other amounts due under the Unemployment Compensation Law;

(3) to promote repayment of educational loans;

(4) to aid collection of fines, fees and costs owed to the district, magistrate and municipal courts;

(5) to aid collection of fines, fees and costs owed to the Bernalillo county metropolitan court; and

(6) to aid in the payment to the state investment officer of film production tax credit amounts owed to the state investment officer due to a loan made against the credit pursuant to [~~Subsection D of Section 7-27-5.26~~] <u>Section 7-27-5.27</u> NMSA 1978.

B. Efforts to accomplish the purpose of the Tax Refund Intercept Program Act may be enhanced by establishing a system to collect debts, in particular, outstanding child support obligations, educational loans, amounts due under the Unemployment Compensation Law, fines, fees and costs owed to the district, magistrate and municipal courts, film production tax credit amounts owed to the state investment officer and fines, fees and costs owed to the Bernalillo county metropolitan court, by setting off the amount of such debts against the state income tax refunds or film production tax credit amounts due the debtors."

Section 2. Section 7-27-5.26 NMSA 1978 (being Laws 2000 (2nd S.S.), Chapter 6, Section 2, as amended by Laws 2005, Chapter 101, Section 2 and by Laws 2005, Chapter 106, Section 1) is amended to read:

"7-27-5.26. INVESTMENT IN FILMS TO BE PRODUCED IN NEW MEXICO.--

A. No more than five percent of the market value of the severance tax permanent fund may be invested in New Mexico film private equity funds or a New Mexico film project under this section.

B. If an investment is made under this section, not more than fifteen million dollars ($15,000,000) of the amount authorized for investment pursuant to Subsection A of this section shall be invested in any one New Mexico film private equity fund or any one New Mexico film project; provided that the aggregate of the amount invested pursuant to this section in a New Mexico film project and the amount loaned pursuant to Section 7-27-5.27 NMSA 1978 to the film production company producing the film project shall not exceed one hundred percent of the cost of production of the film project, as determined pursuant to guidelines established by the state investment council.

C. The state investment officer shall make investments pursuant to this section only upon approval of the state investment council after a review by the private equity investment advisory committee and the New Mexico film division of the economic development department. The state investment officer may make debt or equity investments pursuant to this section only in New Mexico film projects or New Mexico film private equity funds that invest only in film projects that:

(1) are filmed wholly or substantially in New Mexico;

(2) have shown to the satisfaction of the New Mexico film division that a distribution contract is in place with a reputable distribution company;

(3) have agreed that, while filming in New Mexico, a majority of the production crew will be New Mexico residents;

(4) have posted a completion bond or other substantially similar guarantee of completion that has been approved by the New Mexico film division; provided that a completion bond shall not be required if the fund or project is guaranteed pursuant to Paragraph (5) of this subsection; and

(5) have obtained a full, unconditional and irrevocable guarantee of repayment of the invested amount in favor of the severance tax permanent fund:

(a) from an entity that has a credit rating of not less than Baa or BBB by a national rating agency;

(b) from a substantial subsidiary of an entity that has a credit rating of not less than Baa or BBB by a national rating agency;

(c) by providing a full, unconditional and irrevocable letter of credit from a United States incorporated bank with a credit rating of not less than A by a national rating agency; or

(d) from a substantial and solvent entity as determined by the state investment council in accordance with its standards and practices; or

(6) if not guaranteed pursuant to Paragraph (5) of this subsection, have obtained no less than one-third of the estimated total production costs from other sources as approved by the state investment officer.

[~~D. The state investment officer may loan at a market rate of interest, with respect to an eligible New Mexico film project, up to eighty percent of an expected and estimated film production tax credit available to a film production company pursuant to the provisions of Section 7-2F-1 NMSA 1978; provided that the film production company agrees to name the state investment officer as its agent for the purpose of filing an application for the film production tax credit to which the company is entitled if the company does not apply for the film production tax credit. The New Mexico film division of the economic development department shall determine the estimated~~

~~amount of a film production tax credit. The state investment council shall establish guidelines for the state investment officer's initiation of a loan and the terms of the loan.~~

[~~E.~~] D. As used in this section:

(1) "film project" means [~~a~~] one or more single media or multimedia [~~program~~] programs, including advertising messages, fixed on film, videotape, computer disc, laser disc or other similar delivery medium from which the program can be viewed or reproduced and that is intended to be exhibited in theaters; licensed for exhibition by individual television stations, groups of stations, networks, cable television stations or other means; or licensed for the home viewing market; and

(2) "New Mexico film private equity fund" means any limited partnership, limited liability company or corporation organized and operating in the United States that:

(a) has as its primary business activity the investment of funds in return for equity in film projects produced wholly or partly in New Mexico;

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

(c) accepts investments only from accredited investors as that term is defined in Section 2 of the federal Securities Act of 1933, as amended, and rules promulgated pursuant to that section."

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Section 3. A new section of the Severance Tax Bonding Act, Section 7-27-5.27 NMSA 1978, is enacted to read:

"7-27-5.27. [NEW MATERIAL] FILM PRODUCTION TAX CREDIT LOANS.--

A. Up to three percent of the severance tax permanent fund may be used by the state investment officer to make film production tax credit loans to film production companies at a market rate of interest.

B. A film production tax credit loan shall be in an amount not to exceed eighty percent of the estimated film production tax credit expected to be available to the film production company pursuant to the provisions of Section 7-2F-1 NMSA 1978. The New Mexico film division of the economic development department shall determine the estimated amount of the film production tax credit.

C. To be eligible for a film production tax credit loan, the film production company must:

(1) comply with the policies and procedures promulgated by the state investment council;

(2) name the state investment officer as its agent for the purpose of filing an application for the film production tax credit to which the company is entitled in the event that the company fails to apply for the tax credit; and

(3) provide adequate security to guarantee repayment of the film production tax credit loan.

D. The state investment council shall establish policies and guidelines for the state investment officer's initiation of a film production tax credit loan and for the terms of the loan. The policies and guidelines shall include mechanisms to insure completion of the film production that is the subject of the loan or mechanisms to require full repayment of the loan, plus interest or appropriate additional consideration. The policies and guidelines shall include appropriate penalties for a film production company that fails or refuses to timely apply for the film production tax credit or is otherwise noncompliant with the provisions of the loan.

E. The state investment officer shall have the right to secure the direct payment from the taxation and revenue department of all or part of a film production tax credit that is owed to the state investment officer as repayment of a film production tax credit loan."

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SENATE BILL

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

FOR THE STATE PERMANENT FUND TASK FORCE

AN ACT

RELATING TO EDUCATIONAL RETIREMENT; ADJUSTING RETIREMENT ELIGIBILITY REQUIREMENTS.

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

Section 1. Section 22-11-23 NMSA 1978 (being Laws 1981, Chapter 293, Section 2, as amended) is amended to read:

"22-11-23. RETIREMENT ELIGIBILITY.--

A. On and after July 1, 1984:

(1) a member shall be eligible for retirement benefits pursuant to the Educational Retirement Act when [~~either~~] any of the following conditions occurs:

(a) for a person becoming a member prior to July 1, 2006, the sum of the member's age and years of earned service credit equals seventy-five; [~~or~~]

(b) for a person becoming a member on or

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after July 1, 2006, the sum of the member's age and years of earned service credit equals eighty; or

[~~(b)~~] (c) upon completion of five years of earned service credit and upon becoming sixty-five years of age;

(2) a member under sixty years of age eligible to retire under Paragraph (1) of this subsection may retire and receive retirement benefits pursuant to the Educational Retirement Act that [~~he~~] the member would be eligible to receive if [~~he~~] the member were to retire at the age of sixty years reduced by six-tenths of one percent for each one-fourth, or portion thereof, year that retirement occurs prior to the member's sixtieth birthdate but after the fifty-fifth birthdate, and one and eight-tenths percent for each one-fourth, or portion thereof, year that retirement occurs prior to age fifty-five; or

(3) a member under sixty years of age acquiring twenty-five or more years of earned and allowed service credit may retire and receive retirement benefits pursuant to the Educational Retirement Act computed on the same basis as if the member were sixty years of age.

B. A member shall be subject to the provisions of Paragraphs (2) and (3) of Subsection A of this section as they existed at the beginning of [~~his~~] the member's last cumulated four quarters of earned service credit, regardless of later

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amendment."

Section 2. Section 22-11-27 NMSA 1978 (being Laws 1967, Chapter 16, Section 150, as amended) is amended to read:

"22-11-27. DEFERRED RETIREMENT--RESTRICTION.--

A. A member eligible for retirement may continue in employment and shall continue to pay contributions as provided by the Educational Retirement Act.

B. A member may terminate [~~his~~] employment and retire at any time after [~~his~~] <u>the member's</u> age and [~~his~~] earned service credit equal the sum of seventy-five if <u>the retirement is effective prior to July 1, 2006, or the sum of eighty if the retirement is effective on or after July 1, 2006; provided that</u> the contributions [~~he~~] <u>the member</u> has made are left in the fund.

C. A member having five years or more of earned service credit may terminate [~~his~~] employment and retire at any time after reaching the age of sixty-five years if the contributions [~~he~~] <u>the member</u> has made are left in the fund.

D. No member shall be on a retirement status while engaged in employment unless the employment falls within exceptions established by statute or rule of the board."

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2006.

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HOUSE JOINT MEMORIAL

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

FOR THE STATE PERMANENT FUND TASK FORCE

A JOINT MEMORIAL

REQUESTING THE LEGISLATURE TO ALLOW A MINIMUM OF FIVE PERCENT OF SEVERANCE TAX REVENUE TO FLOW TO THE SEVERANCE TAX PERMANENT FUND AS PROVIDED BY LAW.

WHEREAS, the severance taxes attributable to the extraction of New Mexico's natural resources have been a valuable revenue source for the creation and growth of the severance tax permanent fund and for funding bonded indebtedness for capital projects throughout the state; and

WHEREAS, the severance tax permanent fund is regarded as a "rainy day" fund for the time when New Mexico's natural resources are depleted and severance tax collections will cease; and

WHEREAS, annual distributions from the severance tax permanent fund to the general fund based on the value of the severance tax permanent fund provide a significant revenue stream for funding state operations; and

WHEREAS, the continued growth of the severance tax permanent fund is essential to the future welfare of the residents of New Mexico; and

WHEREAS, the state permanent fund task force undertook a thorough review of the severance tax permanent fund and the associated contributions, investment performance and distributions; and

WHEREAS, current law provides that up to ninety-five percent of the prior year's severance tax revenues may be used to finance bonded indebtedness and the remainder of the revenue is to be deposited into the severance tax permanent fund; and

WHEREAS, beginning in 2003, notwithstanding the statutory limitation, the legislature has annually authorized the allocation of the remaining severance tax revenue for additional bonding; and

WHEREAS, this practice, known as the "sweep" of year-end revenues, has resulted in a cumulative diversion of more than two hundred million dollars ($200,000,000) from the severance tax permanent fund;

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that it refrain from future authorizations to "sweep" year-end severance tax revenue and instead permit at least five percent of severance tax revenues to go to the

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severance tax permanent fund; and

BE IT FURTHER RESOLVED that copies of this memorial be transmitted to the president pro tempore of the senate and the speaker of the house of representatives.

HOUSE BILL

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

FOR THE STATE PERMANENT FUND TASK FORCE AND

THE LEGISLATIVE FINANCE COMMITTEE

AN ACT

RELATING TO RETURN TO EMPLOYMENT; RESTRICTING RETURN TO EMPLOYMENT AFTER JUNE 30, 2006 PURSUANT TO THE PUBLIC EMPLOYEES RETIREMENT ACT AND THE EDUCATIONAL RETIREMENT ACT; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2003; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2004 BY REPEALING LAWS 2004, CHAPTER 2, SECTION 1.

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

Section 1. Section 10-11-8 NMSA 1978 (being Laws 1987, Chapter 253, Section 8, as amended by Laws 2004, Chapter 2, Section 1 and by Laws 2004, Chapter 68, Section 4) is amended to read:

"10-11-8. NORMAL RETIREMENT--RETURN TO EMPLOYMENT--BENEFITS CONTINUED FOR CERTAIN RETIRED MEMBERS--EMPLOYER CONTRIBUTIONS.--

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A. A member may retire upon fulfilling the following requirements prior to the selected date of retirement:

(1) a written application for normal retirement, in the form prescribed by the association, is filed with the association;

(2) employment is terminated with all employers covered by any state system or the educational retirement system;

(3) the member selects an effective date of retirement that is the first day of a calendar month; and

(4) the member meets the age and service credit requirement for normal retirement specified in the coverage plan applicable to the member.

B. The amount of normal retirement pension is determined in accordance with the coverage plan applicable to the member.

C. Except as provided in Subsection D, [~~or~~] E or F of this section, a retired member may be subsequently employed prior to July 1, 2006 by an affiliated public employer if the following conditions apply:

(1) the member has not been employed as an employee of an affiliated public employer for at least ninety consecutive days from the date of retirement to the commencement of employment or re-employment with an affiliated public employer. If the retired member returns to employment without first completing ninety consecutive days of

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retirement:

(a) the retired member's pension shall be suspended immediately and the previously retired member shall become a member; and

(b) upon termination of the subsequent employment, the previously retired member's pension shall be calculated pursuant to Paragraph (2) of Subsection [~~E~~] G of this section;

(2) effective the first day of the month following the month in which the retired member's earnings total twenty-five thousand dollars ($25,000) during a calendar year, a retired member who returns to employment shall be required to make contributions to the fund as specified in the Public Employees Retirement Act; provided, however, that after December 31, 2006, no additional contributions shall be required pursuant to this paragraph;

(3) until the subsequent employment is terminated, the affiliated public employer that employs the retired member shall make contributions to the fund in the amount specified in the Public Employees Retirement Act or in a higher amount adjusted for full actuarial cost as determined annually by the association; and

(4) a retired member who returns to employment during retirement pursuant to this subsection is entitled to receive retirement benefits but is not entitled to acquire

service credit or to acquire or purchase service credit in the future for the period of the retired member's re-employment with an affiliated public employer.

D. If a member retires and is subsequently employed by an affiliated public employer on or after July 1, 2006, the retired member's pension shall be suspended the first day of the month following the month in which the retired member's earnings for a calendar year from that subsequent employment exceed fifteen thousand dollars ($15,000).

[~~D.~~] E. The provisions of Paragraphs (2) and (3) of Subsection C of this section [~~that require employee or employer contributions~~] and the provisions of Subsection D of this section do not apply to:

(1) a retired member who is appointed chief of police of an affiliated public employer, other than the affiliated public employer from which the retired member retired, or who is appointed undersheriff; provided that:

(a) the retired member files an irrevocable exemption from membership with the association within thirty days of appointment;

(b) each sheriff's office shall be limited to one undersheriff qualifying pursuant to this paragraph;

(c) the irrevocable exemption shall be for the chief of police's or the undersheriff's term of office;

and

(d) filing an irrevocable exemption shall irrevocably bar the retired member from acquiring service credit for the period of exemption from membership; or

(2) a retired member employed by the legislature for legislative session work.

[~~E.~~] F. At any time during a retired member's subsequent employment pursuant to Subsection C or D of this section, the retired member may elect to suspend the pension. [~~When the pension is suspended, the following conditions shall apply~~]

G. When a pension is suspended pursuant to Subparagraph (a) of Paragraph (1) of Subsection C of this section, Subsection D of this section or Subsection F of this section, the following conditions apply:

(1) the retired member who is subsequently employed by an affiliated public employer shall become a member. The previously retired member and the subsequent affiliated public employer shall make the required employee and employer contributions, and the previously retired member shall accrue service credit for the period of subsequent employment; and

(2) when a previously retired member terminates the subsequent employment with an affiliated public employer, [~~he~~] the previously retired member shall retire according to the provisions of the Public Employees Retirement

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Act, subject to the following conditions:

(a) payment of the pension shall resume in accordance with the provisions of Subsection A of this section;

(b) unless the previously retired member accrued at least three years of service credit on account of the subsequent employment, the recalculation of pension shall: 1) employ the form of payment selected by the previously retired member at the time of the first retirement; and 2) use the provisions of the coverage plan applicable to the member on the date of the first retirement; and

(c) the recalculated pension shall not be less than the amount of the suspended pension.

[~~F.~~] H. The pension of a member who has three or more years of service credit under each of two or more coverage plans shall be determined in accordance with the coverage plan that produces the highest pension. The pension of a member who has service credit under two or more coverage plans but who has three or more years of service credit under only one of those coverage plans shall be determined in accordance with the coverage plan in which the member has three or more years of service credit. If the service credit is acquired under two different coverage plans applied to the same affiliated public employer as a consequence of an election by the members, adoption by the affiliated public employer or a change in the

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law that results in the application of a coverage plan with a greater pension, the greater pension shall be paid a member retiring from the affiliated public employer under which the change in coverage plan took place regardless of the amount of service credit under the coverage plan producing the greater pension; provided the member has three or more years of continuous employment with that affiliated public employer immediately preceding or immediately preceding and immediately following the date the coverage plan changed. The provisions of each coverage plan for the purpose of this subsection shall be those in effect at the time the member ceased to be covered by the coverage plan. "Service credit", for the purposes of this subsection, shall be only personal service rendered an affiliated public employer and credited to the member under the provisions of Subsection A of Section 10-11-4 NMSA 1978. Service credited under any other provision of the Public Employees Retirement Act shall not be used to satisfy the three-year service credit requirement of this subsection."

Section 2. Section 22-11-25.1 NMSA 1978 (being Laws 2001, Chapter 283, Section 2, as amended by Laws 2003, Chapter 80, Section 1 and by Laws 2003, Chapter 145, Section 1) is amended to read:

"22-11-25.1. RETURN TO EMPLOYMENT--BENEFITS CONTINUED <u>FOR CERTAIN MEMBERS</u>--ADMINISTRATIVE UNIT CONTRIBUTIONS.--

A. Except as provided in Subsections B and E of this section, beginning January 1, 2002 and continuing [~~until January 1, 2012~~] through June 30, 2006, a retired member may begin employment at a local administrative unit and shall not be required to suspend retirement benefits if the member has not been employed as an employee or independent contractor by a local administrative unit for at least twelve consecutive months from the date of retirement to the commencement of employment or reemployment with a local administrative unit. If the retired member returns to employment without first completing twelve consecutive months of retirement, the retired member shall remove himself from retirement.

B. A retired member who was retired on or before January 1, 2001, has not since suspended or been required to suspend retirement benefits pursuant to the Educational Retirement Act and is reemployed by a local administrative unit prior to July 1, 2006 may continue employment at the local administrative unit and shall not be required to suspend retirement benefits.

C. A retired member who returns to employment during retirement pursuant to Subsection A, [~~or~~] B or E of this section is entitled to continue to receive retirement benefits but is not entitled to acquire service credit or to acquire or purchase service credit in the future for the period of the retired member's reemployment with a local administrative unit.

D. A retired member who returns to employment pursuant to [~~Subsections~~] Subsection A, [~~or~~] B or E of this section shall not make contributions to the fund as specified in the Educational Retirement Act; however, the local administrative unit's contributions as specified in that act shall be paid to the fund as if the retired member was a non-retired employee.

E. Beginning July 1, 2003 and continuing [~~until January 1, 2012~~] through July 1, 2006, a retired member who retired on or before January 1, 2001 and who has not been employed as an employee or independent contractor by a local administrative unit for at least ninety days may begin employment at a local administrative unit without suspending retirement benefits if the retired member was not employed by a local administrative unit for an additional twelve or more consecutive months after the initial date of the retirement; provided that the ninety-day period shall not include any part of a summer or other scheduled break or vacation period.

F. A retired member who returns to employment with a local administrative unit prior to July 1, 2006 and, pursuant to the provisions of this section, is entitled to continue to receive retirement benefits shall not be required to suspend retirement benefits at any time in the future if the member remains employed by the local administrative unit or is employed by another local administrative unit; provided, however, that if the member voluntarily suspends retirement benefits at any time, the member shall be entitled to continue to receive retirement benefits pursuant to the provisions of

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this section only if the member would be eligible to do so based upon the effective date of the member's most recent retirement."

Section 3. REPEAL.--Laws 2004, Chapter 2, Section 1 is repealed.

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