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BILL

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

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

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

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

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

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

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

The council shall be composed of:

- (1) the governor;
- (2) the state treasurer;

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- 1 (3) the commissioner of public lands;
2 (4) the secretary;
3 (5) the chief financial officer of a state
4 institution of higher education appointed by the governor with
5 the advice and consent of the senate;
6 (6) four members appointed by the New Mexico
7 legislative council with the advice and consent of the senate;
8 provided that no more than two members shall be members of the
9 same political party; and
10 (7) two members appointed by the governor with
11 the advice and consent of the senate.
12 B. The chair [~~of the council shall be the governor~~]
13 and the vice chair of the council shall be selected annually by
14 the council from among the members appointed pursuant to
15 Paragraphs (6) and (7) of Subsection A of this section. All
16 actions of the council shall be by majority vote, and a
17 majority of the members shall constitute a quorum.
18 C. Members of the council appointed pursuant to
19 Paragraphs (6) and (7) of Subsection A of this section shall be
20 reimbursed per diem and mileage pursuant to the provisions of
21 the Per Diem and Mileage Act.
22 D. Members of the council and its committees are
23 public employees within the meaning of the Tort Claims Act and
24 are entitled to all immunity and indemnification provided under
25 that act."

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1 SECTION 2. Section 6-8-4 NMSA 1978 (being Laws 1957,
2 Chapter 179, Section 4, as amended) is amended to read:

3 "6-8-4. INVESTMENT OFFICE--STATE INVESTMENT OFFICER--
4 TERMS.--

5 A. There is established an "investment office".
6 The chief administrative officer of the office shall be known
7 as the "state investment officer".

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

20 C. The state investment officer shall serve [~~for an~~
21 ~~initial term of two years beginning July 1, 1981 and thereafter~~
22 ~~for terms of four years. The state investment officer may be~~
23 ~~removed from office by the council for cause] at the pleasure
24 of the council."~~

25 SECTION 3. Section 6-8-7 NMSA 1978 (being Laws 1957,
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1 Chapter 179, Section 7, as amended) is amended to read:

2 "6-8-7. POWERS AND DUTIES OF THE STATE INVESTMENT COUNCIL
3 AND STATE INVESTMENT OFFICER--INVESTMENT POLICY--INVESTMENT
4 MANAGERS.--

5 A. Subject to the limitations, conditions and
6 restrictions contained in policymaking regulations or
7 resolutions adopted by the council, the council may make
8 purchases, sales, exchanges, investments and reinvestments of
9 the assets of all funds in accordance with the Uniform Prudent
10 Investor Act. The state investment officer and the council are
11 trustees of all funds under their control and shall see that
12 money invested is at all times handled in the best interests of
13 the state. The council may delegate administrative and
14 investment-related functions to the state investment officer.

15 B. The state investment officer shall formulate and
16 recommend to the council for approval investment [~~regulations~~
17 ~~or resolutions~~] policies pertaining to the kind or nature of
18 investments and limitations, conditions and restrictions upon
19 the methods, practices or procedures for investment,
20 reinvestment, purchase, sale or exchange transactions that
21 should govern the activities of the investment office.

22 C. The council shall meet at least once [~~each~~
23 every other month, and as often as exigencies may demand, to
24 consult with the state investment officer concerning the work
25 of the investment office. The council shall have access to all

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1 files and records of the investment office and shall require
2 the state investment officer to report on and provide
3 information necessary to the performance of council functions.
4 The council may hire one or more investment management or
5 consulting firms to advise the council with respect to the
6 council's [~~overall investment plan for the investment of all~~
7 ~~funds managed by the investment office~~] investments and pay
8 reasonable compensation for such advisory services from the
9 assets of the applicable funds, subject to budgeting and
10 appropriation by the legislature. The terms of any such
11 investment management services contract shall incorporate the
12 statutory requirements for investment of funds under the
13 council's jurisdiction.

14 D. The council shall provide an opportunity for
15 public comment at meetings of the council. Advance notice of
16 meetings shall be published on the council's web site and in a
17 newspaper of general circulation at least ten days in advance
18 of the meeting.

19 E. All funds managed by the [~~state investment~~
20 ~~officer~~] council shall be managed in accordance with the
21 Uniform Prudent Investor Act. [~~The council may employ~~
22 ~~investment management services to invest the funds and may pay~~
23 ~~reasonable compensation for investment management services from~~
24 ~~the assets of the applicable funds, subject to budgeting and~~
25 ~~appropriation by the legislature.~~]

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1 F. The council may contract for legal services on a
2 contingent fee basis, subject to a request for proposals
3 process approved by the council.

4 G. The council may provide for commercial liability
5 insurance coverage specifically related to official duties and
6 council actions for members of the council, investment office
7 staff and council committees, subject to budget availability.

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

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

24 ~~[H.]~~ J. For funds available for investment for more
25 than one year, the council may contract with any state agency

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1 to provide investment advisory or investment management
2 services, separately or through a pooled investment fund,
3 provided the state agency enters into a joint powers agreement
4 with the council and that state agency pays at least the direct
5 cost of such services. Notwithstanding any statutory provision
6 governing state agency investments, the council may invest
7 funds available from a state agency pursuant to a joint powers
8 agreement in any type of investment permitted for the land
9 grant permanent funds under the prudent investor rule. In
10 performing investment services for a state agency, the council
11 [~~and~~], the state investment officer and investment office staff
12 are exempt from the New Mexico Uniform Securities Act. As used
13 in this subsection, "state agency" means any branch, agency,
14 department, board, instrumentality, institution or political
15 subdivision of the state, the New Mexico finance authority, the
16 New Mexico mortgage finance authority and any tax-exempt
17 private endowment entity whose sole beneficiary is a state
18 agency.

19 [~~F.~~] K. The state investment officer shall provide
20 quarterly performance reports to the legislative finance
21 committee. Annually, the [~~state investment officer~~] council
22 shall [~~ratify and~~] provide written investment policies
23 [~~including any amendments~~] to the legislative finance
24 committee."

25 SECTION 4. Section 6-8-14 NMSA 1978 (being Laws 1957,

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1 Chapter 179, Section 14, as amended) is amended to read:

2 "6-8-14. MONTHLY REPORTS.--No later than [~~ten~~] thirty
3 days after the close of each month, the state investment
4 officer shall submit to the secretary and the [~~state~~
5 ~~investment~~] council a report of the operations of the office
6 during the past month. Each report shall give a complete
7 statement of the state investment portfolio as of the time of
8 the report and, in addition, shall include a detailed summary
9 of the month's investment, reinvestment, purchase, sale and
10 exchange transactions, setting forth the investments bought,
11 sold or exchanged, the dates thereof, the prices paid or
12 obtained, the names of the dealers involved, fees paid for each
13 transaction, disclosure of contractor arrangements and a
14 statement of the funds or accounts referred to herein. [~~The~~
15 ~~reports shall also be circulated to a mailing list of~~
16 ~~investment bankers and brokers recommended by the council.~~]
17 The reports shall be published on the web [~~sites~~] site of the
18 council [~~the legislature and the department of finance and~~
19 ~~administration~~] and shall be open for inspection to the public
20 and the press in the office of the state investment officer."

21 SECTION 5. Section 6-8-20 NMSA 1978 (being Laws 1987,
22 Chapter 219, Section 3, as amended) is amended to read:

23 "6-8-20. PRIVATE EQUITY INVESTMENT ADVISORY COMMITTEE
24 CREATED--MEMBERSHIP--DUTIES--TERMS--LIABILITIES--CONFLICT OF
25 INTEREST.--

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1 A. There is created the "private equity investment
2 advisory committee" to the council. The committee consists of
3 the state investment officer, a member of the council appointed
4 by the council and three members who are qualified by
5 competence and experience in finance and investment and
6 knowledgeable about the private equity investment process and
7 who are appointed by the council.

8 B. Members appointed by the council, except the
9 council member, shall be appointed for three-year terms;
10 provided that the terms of the initial committee members shall
11 be staggered so that the term of one member expires each year.
12 After the initial appointments, all appointed members shall be
13 appointed for three-year terms. Members shall serve until
14 their successors are appointed. A vacancy occurring other than
15 by expiration of term shall be filled in the same manner as the
16 original appointment, but only for the unexpired term.

17 C. The committee shall review and make
18 recommendations to the council on investments authorized
19 pursuant to Sections 7-27-5.15 and 7-27-5.26 NMSA 1978 and all
20 other private equity investments and shall advise the council
21 in matters and policies related to such investments. The
22 committee shall establish policies for national private equity
23 fund investments, New Mexico private equity fund investments
24 and New Mexico film [~~private equity fund~~] investments [~~not less~~
25 ~~often than annually~~] and shall make copies available to

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1 interested parties.

2 D. Members of the committee shall receive per diem
3 and mileage as provided for nonsalaried public officers in the
4 Per Diem and Mileage Act and shall receive no other
5 compensation, perquisite or allowance.

6 E. The committee shall elect annually a chair from
7 among its members and may elect other officers as necessary.
8 The committee shall meet upon the call of the chair or the
9 state investment officer.

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

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

17 H. The state investment officer may enter into
18 contracts with investment advisors for private equity fund
19 investments and film fund investments authorized pursuant to
20 Sections 7-27-5.15 and 7-27-5.26 NMSA 1978 and all other
21 private equity investments and may pay budgeted expenses for
22 the advisors from the assets of any fund administered under the
23 supervision of the council, as applicable.

24 I. As used in this section, "private equity
25 investments" means any legal entity that has as its primary

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1 business activity the investment of funds in return for equity
2 in or debt of businesses for the purpose of providing capital
3 for startup, expansion, new product development,
4 recapitalization or a similar business purpose."

5 SECTION 6. EFFECTIVE DATE.--The effective date of the
6 provisions of this act is July 1, 2011.

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