

## SIC Legislative Priority #1 for 2012 Session

**SJR 17 LGPF/Water Trust Permanent Fund constitutional amendment (Sen. Burt):** this bill proposes two changes to the Constitution. One will expand an investment cap on international equity investments by the Land Grant Permanent Fund from 15% to 25%. The other change will resolve an existing conflict between the Constitution and SIC governing statute regarding the LGPF.

In the Constitution, (Article XII, Section 7) the LGPF is to be administered under “*ordinary prudence*”, while under statute (and current practice) the standard of care is raised to that of the Uniform Prudent Investor Act:

### Constitution:

C. In making investments, the state investment officer, under the supervision of the state investment council, shall exercise the judgment and care under the circumstances then prevailing that businessmen of ordinary prudence, discretion and intelligence exercise in the management of their own affairs not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

### Statute:

“45-7-603. Standard of care; portfolio strategy; risk and return objectives. (1995)

- A. A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.
- B. A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.
- C. Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:
  - (1) general economic conditions;
  - (2) the possible effect of inflation or deflation;
  - (3) the expected tax consequences of investment decisions or strategies;
  - (4) the role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interest in closely held enterprises, tangible and intangible personal property and real property;
  - (5) the expected total return from income and the appreciation of capital;
  - (6) other resources of the beneficiaries;
  - (7) needs for liquidity, regularity of income and preservation or appreciation of capital; and
  - (8) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.
- D. A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.
- E. A trustee may invest in any kind of property or type of investment consistent with the standards of the Uniform Prudent Investor Act [45-7-601 NMSA 1978].
- F. A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.”

In addition, this bill seeks to expand the existing cap on international equity investment from 15% to 25%. This would not mandate or require such a shift in LGPF investment, but would allow the SIC to increase its asset allocation to the international investment class as appropriate. The existing cap was put in place in the Constitution prior to the emergence of the global economy. Having the ability to invest at prudent levels internationally today would benefit the permanent funds greatly, both in performance, and as a hedge against long-term investment risk.

SJR 17 passed the Senate 32-0 in 2011, but ran out of time in the House. The SIC will seek to pass this during the 2012 session and on the ballot for voters in 2012.

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SENATE JOINT RESOLUTION 17

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

INTRODUCED BY

William F. Burt

ENDORSED BY THE INVESTMENTS OVERSIGHT COMMITTEE

A JOINT RESOLUTION

PROPOSING TO AMEND ARTICLE 12, SECTION 7 AND ARTICLE 16,  
SECTION 6 OF THE CONSTITUTION OF NEW MEXICO TO PRESERVE THE  
LAND GRANT PERMANENT FUNDS AND THE WATER TRUST FUND BY  
INCREASING THE DUTY OF CARE AND CHANGING THE LIMITATIONS ON  
INVESTMENT.

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

SECTION 1. It is proposed to amend Article 12, Section 7  
of the constitution of New Mexico to read:

"A. As used in this section, "fund" means the  
permanent school fund described in Article 12, Section 2 of  
this ~~[article]~~ constitution and all other permanent funds  
derived from lands granted or confirmed to the state by the act  
of congress of June 20, 1910, entitled "An act to enable the  
people of New Mexico to form a constitution and state

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1 government and be admitted into the union on an equal footing  
2 with the original states.".

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

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

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

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

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

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1 (3) stocks eligible for purchase shall be  
2 restricted to those stocks of businesses listed upon a national  
3 stock exchange or included in a nationally recognized list of  
4 stocks; and

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

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

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

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

24 (1) in fiscal years 2005 through 2012, an  
25 amount equal to eight-tenths percent of the average of the

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1 year-end market values of the fund for the immediately  
2 preceding five calendar years; provided that any additional  
3 distribution from the permanent school fund pursuant to this  
4 paragraph shall be used to implement and maintain educational  
5 reforms as provided by law; and

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

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

16 **SECTION 2.** It is proposed to amend Article 16, Section 6  
17 of the constitution of New Mexico to read:

18 "A. The "water trust fund" is created in the state  
19 treasury to conserve and protect the water resources of New  
20 Mexico and to ensure that New Mexico has the water it needs for  
21 a strong and vibrant future. The purpose of the fund shall be  
22 to secure a supply of clean and safe water for New Mexico's  
23 residents. The fund shall consist of money appropriated,  
24 donated or otherwise accrued to the fund. Money in the fund  
25 shall be invested by the state investment officer [~~as land~~

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underscoring material = new  
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1 ~~grant permanent funds are invested]~~ in accordance with the  
2 limitations in Article 12, Section 7 of the constitution of New  
3 Mexico, and there shall be strict accountability and oversight  
4 measures as provided by the state investment council to ensure  
5 appropriate safety of and return on investments. Earnings from  
6 investment of the fund shall be credited to the fund. Money in  
7 the fund shall not revert or be expended for any purpose, but  
8 an annual distribution shall be made to the water project fund,  
9 which shall be used only to support critically needed projects  
10 that preserve and protect New Mexico's water supply and is in  
11 accordance with Subsection B of this section.

12 B. On July 1, 2008 and each fiscal year thereafter,  
13 an annual distribution shall be made from the water trust fund  
14 pursuant to law, and that distribution shall then be  
15 appropriated by the legislature only for water projects  
16 consistent with a state water plan and as otherwise provided by  
17 law."

18 SECTION 3. The amendment proposed by this resolution  
19 shall be submitted to the people for their approval or  
20 rejection at the next general election or at any special  
21 election prior to that date that may be called for that  
22 purpose.