

Significant Issues

The prudent investor rule underpins the current set of investment statutes. The essence of the rule is:

“...to observe how men of prudence, discretion and intelligence manage their own affairs, not in regard to speculation, but in regard to permanent disposition of their funds, considering the probable income as well as the probable safety of the capital to be invested.”

The New Mexico “Uniform Prudent Investor Act” (45-7-601, NMSA, 1978 to 45-7-612, NMSA, 1978) states 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. 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. Trustees shall consider the following circumstances when managing trust assets:

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; and
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.
9. A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

In Addition:

10. 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 to 45-7-612 NMSA 1978].
11. 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.

FISCAL IMPLICATIONS

- This bill will broaden investment choices to include asset classes that are currently precluded. These include derivatives and other vehicles. According to the SIC's actuary, the inability to invest in a broader diversity of investment has compromised returns in the

LGPF and STPF.

OTHER SUBSTANTIVE ISSUES

- The Educational Retirement Board has noted that over half the states use a statute similar to this proposal to govern their investment activity.

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