

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 269

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

Timothy Z. Jennings

AN ACT

RELATING TO SPECIAL PROSECUTIONS; PROVIDING FOR A SPECIAL PROSECUTOR TO INVESTIGATE AND TO TAKE ACTION AGAINST ALLEGED FRAUD AND OTHER IMPROPRIETIES ARISING FROM MANAGEMENT OF THE STATE'S INVESTMENT FUNDS AND TO RECOVER MONEY LOST TO THE FUNDS DUE TO FRAUD OR OTHER IMPROPRIETIES; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Section 1. OFFICE OF SPECIAL PROSECUTOR.--

A. The "office of special prosecutor" is created. The office of special prosecutor shall have the jurisdiction and act on behalf of the state as provided in Subsection E of this section. The person to fill the office of special prosecutor shall be an independent contractor procured by the office of the attorney general following the competitive sealed

underscoring material = new
[bracketed material] = delete

underscoring material = new
[bracketed material] = delete

1 proposal for professional services provisions of the
2 Procurement Code. The office of special prosecutor shall
3 exercise its investigatory and other functions independently of
4 and without approval or control of the attorney general;
5 provided that all invoices under the contract shall be
6 submitted to the attorney general for approval, and the
7 attorney general shall be responsible for reviewing and
8 approving invoices, ensuring compliance with contract
9 provisions and approving payments for services rendered.

10 B. The person selected to fill the office of
11 special prosecutor shall be an attorney with a reputation for
12 integrity and impartial decision-making and with appropriate
13 experience to ensure that an investigation will be properly,
14 expeditiously and thoroughly conducted and that any action,
15 whether administrative, civil or criminal, will be skillfully
16 and vigorously executed. The person selected shall agree that
17 the person's responsibilities as special prosecutor shall take
18 first precedence over other matters in the person's
19 professional life, including the necessity to devote the
20 person's entire professional time to an investigation and
21 prosecution if conditions require that commitment.

22 C. As an exception to the provisions of Section
23 13-1-150 NMSA 1978, the original term of the contract for the
24 office of special prosecutor shall be for one year and may be
25 continued for additional one-year terms until the matter being

.181391.3

underscored material = new
[bracketed material] = delete

1 investigated or prosecuted is brought to conclusion, subject to
2 sufficient money being appropriated to continue the contract.

3 D. The office of special prosecutor may administer
4 oaths and the power to subpoena, which may be enforced through
5 any district court of the state. The subpoena power is limited
6 to the office of special prosecutor's jurisdiction as specified
7 in this section. Service of process shall be made by any
8 sheriff or any member of the New Mexico state police and shall
9 be served without cost to the office of special prosecutor.

10 E. The jurisdiction of the office of special
11 prosecutor is to investigate the loss or misuse of money from
12 the funds that are invested by the state investment officer in
13 any instance involving alleged or suspected fraud or other
14 malfeasance or negligence; to determine, if appropriate,
15 whether any money lost or misused can be recovered; and, if the
16 determination is that money can be recovered, to take any
17 appropriate administrative, civil or criminal action necessary
18 to recover the money.

19 F. Monthly, following the inception of a contract,
20 the office of special prosecutor shall report in writing the
21 status of its work to the New Mexico legislative council and
22 the legislative finance committee. When the office of special
23 prosecutor makes a determination concerning whether money can
24 be recovered, and prior to any decision to take administrative,
25 civil or criminal action, the office of special prosecutor

.181391.3

underscored material = new
[bracketed material] = delete

1 shall report the determination to the New Mexico legislative
2 council and to the legislative finance committee and shall take
3 no further action until the New Mexico legislative council
4 reviews the determination with the office of special
5 prosecutor.

6 G. For fiscal year 2010 and each fiscal year
7 thereafter in which the contract with the office of special
8 prosecutor is continued, pursuant to Sections 6-3-23 through
9 6-3-25 NMSA 1978, the office of attorney general may request
10 budget increases from the funds managed by the state investment
11 officer as are necessary to fund the office of special
12 prosecutor contract and, if approved, the amount of budget
13 increase is appropriated.

14 Section 2. EMERGENCY.--It is necessary for the public
15 peace, health and safety that this act take effect immediately.