

SENATE RULES COMMITTEE SUBSTITUTE FOR  
SENATE BILLS 17 & 64

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

AN ACT

RELATING TO PUBLIC FINANCES; CHANGING THE MEMBERSHIP, POWERS  
AND DUTIES OF THE STATE INVESTMENT COUNCIL; PROVIDING FOR THE  
ELECTION OF THE CHAIR AND VICE CHAIR OF THE COUNCIL; EXTENDING  
REPORTING DEADLINES; DECLARING AN EMERGENCY.

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)]~~ (1) the state treasurer;

~~[(3)]~~ (2) the commissioner of public lands;

~~[(4)]~~ (3) the secretary;

1                   ~~[(5) the chief financial officer of a state~~  
2 ~~institution of higher education appointed by the governor with~~  
3 ~~the advice and consent of the senate;~~

4                   ~~(6) four members appointed by the New Mexico~~  
5 ~~legislative council with the advice and consent of the senate;~~  
6 ~~provided that no more than two members shall be members of the~~  
7 ~~same political party;]~~

8                   (4) one public member appointed by the  
9 president pro tempore of the senate with the advice and consent  
10 of the senate;

11                   (5) one public member appointed by the  
12 minority floor leader of the senate with the advice and consent  
13 of the senate;

14                   (6) one public member appointed by the speaker  
15 of the house of representatives with the advice and consent of  
16 the senate;

17                   (7) one public member appointed by the  
18 minority floor leader of the house of representatives with the  
19 advice and consent of the senate; and

20                   ~~[(7) two]~~ (8) three members appointed by the  
21 governor with the advice and consent of the senate.

22                   B. No more than two members of the council  
23 appointed pursuant to Paragraphs (4) through (7) of Subsection A  
24 of this section shall be members of the same political party.

25                   [B.] C. The chair [of the council shall be the

1 ~~governor~~] and the vice chair of the council shall be selected  
 2 by the council from among the members appointed pursuant to  
 3 Paragraphs (4) through (8) of Subsection A of this section for  
 4 terms of two years, provided that the chair and the vice chair  
 5 shall serve staggered terms, shall serve no more than two  
 6 consecutive terms and the vice chair elected in 2011 shall  
 7 serve a one-year term to allow for staggered terms.

8 D. All actions of the council shall be by majority  
 9 vote, and a majority of the members shall constitute a quorum.

10 ~~[G.]~~ E. Members of the council appointed pursuant  
 11 to Paragraphs ~~[(6) and (7)]~~ (4) through (8) of Subsection A of  
 12 this section shall be reimbursed per diem and mileage pursuant  
 13 to the provisions of the Per Diem and Mileage Act."

14 SECTION 2. Section 6-8-3 NMSA 1978 (being Laws 1957,  
 15 Chapter 179, Section 3, as amended) is amended to read:

16 "6-8-3. COUNCIL TERMS AND QUALIFICATIONS.--

17 A. Members of the council appointed pursuant to  
 18 Paragraphs ~~[(6) and (7)]~~ (4) through (8) of Subsection A of  
 19 Section 6-8-2 NMSA 1978, with the advice and consent of the  
 20 senate, shall serve for staggered terms of five years. Members  
 21 of the council shall serve until their successors are appointed  
 22 and have qualified.

23 B. The members of the council appointed pursuant to  
 24 Paragraphs ~~[(6) and (7)]~~ (4) through (8) of Subsection A of  
 25 Section 6-8-2 NMSA 1978 shall be qualified by competence and no

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1 less than ten years experience in the field of investment or  
2 finance. A member of the council shall not have had any  
3 contracts to do business with the state investment council, the  
4 investment office, the office of the state treasurer, the  
5 educational retirement board, the public employees retirement  
6 association, the New Mexico finance authority or the state  
7 board of finance for a period of two calendar years prior to  
8 the person's appointment to the council and shall not enter  
9 into any contracts to do business with any of the named state  
10 agencies or instrumentalities for a period of two calendar  
11 years after the end of the term for which the member was  
12 appointed. Members of the council and officers and employees  
13 of the council shall be governed by the provisions of the  
14 Governmental Conduct Act. Nothing in this section or in the  
15 Governmental Conduct Act shall be construed as prohibiting an  
16 officer of a financial institution from participating as a  
17 member of the council in setting general policies of the  
18 council, nor shall any provision of the Governmental Conduct  
19 Act prohibit the council or the state treasurer from depositing  
20 funds under the jurisdiction of the council in any financial  
21 institution. A council member shall not hold an office or  
22 employment in a political party.

23 C. ~~[The member appointed pursuant to Paragraph (5)  
24 of Subsection A of Section 6-8-2 NMSA 1978 shall serve at the  
25 pleasure of the governor.]~~ A member of the council appointed

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1 pursuant to Paragraphs [~~(6) and (7)~~] (4) through (8) of  
 2 Subsection A of Section 6-8-2 NMSA 1978 may be removed from the  
 3 council by the appointing person or entity, for failure to  
 4 attend three consecutive meetings or other cause, in the manner  
 5 provided for removal of members of boards of regents under  
 6 Article 12, Section 13 of the constitution of New Mexico. A  
 7 vacancy in the membership of the council occurring other than  
 8 by expiration of term shall be filled in the same manner as the  
 9 original appointment but for the unexpired term only."

10 **SECTION 3.** Section 6-8-4 NMSA 1978 (being Laws 1957,  
 11 Chapter 179, Section 4, as amended) is amended to read:

12 "6-8-4. INVESTMENT OFFICE--STATE INVESTMENT OFFICER--  
 13 TERMS.--

14 A. There is established an "investment office".  
 15 The chief administrative officer of the office shall be known  
 16 as the "state investment officer".

17 B. The state investment officer shall be appointed  
 18 by the council with the advice and consent of the senate. The  
 19 state investment officer shall devote the officer's entire time  
 20 and attention to the duties of that office and shall not engage  
 21 in any other occupation or profession or hold any other public  
 22 office, appointive or elective. The officer shall be a person  
 23 qualified, by training and investment experience, to direct the  
 24 work of the investment office and shall have had at least five  
 25 years' professional experience as an investment officer. The

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1 officer shall receive a salary to be determined by the [state  
2 investment] council [~~but in no case less than fifty thousand~~  
3 ~~dollars (\$50,000) annually~~].

4 C. The state investment officer shall serve for an  
5 initial term of two years beginning July 1, 1981 and thereafter  
6 for terms of four years. The state investment officer may be  
7 removed from office by the council for cause."

8 SECTION 4. Section 6-8-7 NMSA 1978 (being Laws 1957,  
9 Chapter 179, Section 7, as amended) is amended to read:

10 "6-8-7. POWERS AND DUTIES OF THE STATE INVESTMENT COUNCIL  
11 AND STATE INVESTMENT OFFICER--INVESTMENT POLICY--INVESTMENT  
12 MANAGERS.--

13 A. Subject to the limitations, conditions and  
14 restrictions contained in policymaking regulations or  
15 resolutions adopted by the council, the council may make  
16 purchases, sales, exchanges, investments and reinvestments of  
17 the assets of all funds in accordance with the Uniform Prudent  
18 Investor Act. The state investment officer and the council are  
19 trustees of all funds under their control and shall see that  
20 money invested is at all times handled in the best interests of  
21 the state. The council may delegate administrative and  
22 investment-related functions to the state investment officer.

23 B. The state investment officer shall formulate and  
24 recommend to the council for approval investment [~~regulations~~  
25 ~~or resolutions~~] policies pertaining to the kind or nature of

1 investments and limitations, conditions and restrictions upon  
2 the methods, practices or procedures for investment,  
3 reinvestment, purchase, sale or exchange transactions that  
4 should govern the activities of the investment office.

5 C. The council shall meet at least once each month,  
6 and as often as exigencies may demand, to consult with the  
7 state investment officer concerning the work of the investment  
8 office. The council shall have access to all files and records  
9 of the investment office and shall require the state investment  
10 officer to report on and provide information necessary to the  
11 performance of council functions. The council may hire one or  
12 more investment management or consulting firms to advise the  
13 council with respect to the council's [~~overall investment plan~~  
14 ~~for the investment of all funds managed by the investment~~  
15 ~~office~~] investments and pay reasonable compensation for such  
16 advisory services from the assets of the applicable funds,  
17 subject to budgeting and appropriation by the legislature. The  
18 terms of any such investment management services contract shall  
19 incorporate the statutory requirements for investment of funds  
20 under the council's jurisdiction.

21 D. The council shall provide an opportunity for  
22 public comment at meetings of the council. Advance notice of  
23 meetings shall be published on the council's web site and in a  
24 newspaper of general circulation at least ten days in advance  
25 of the meeting.

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1           E. All funds managed by the [~~state investment~~  
2 ~~officer~~] council shall be managed in accordance with the  
3 Uniform Prudent Investor Act. [~~The council may employ~~  
4 ~~investment management services to invest the funds and may pay~~  
5 ~~reasonable compensation for investment management services from~~  
6 ~~the assets of the applicable funds, subject to budgeting and~~  
7 ~~appropriation by the legislature.~~]

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

14           G. 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. For funds available for investment for more than  
25 one year, the council may contract with any state agency to



1 provide investment advisory or investment management services,  
 2 separately or through a pooled investment fund, provided the  
 3 state agency enters into a joint powers agreement with the  
 4 council and that state agency pays at least the direct cost of  
 5 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 I. 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 5. 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 6. 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 7. TEMPORARY PROVISION--TRANSITION MEMBERSHIP OF  
 6 STATE INVESTMENT COUNCIL.--

7 A. On July 1, 2011, the chief financial officer  
 8 appointed by the governor is no longer a member of the state  
 9 investment council.

10 B. Within thirty days of July 1, 2011, the governor  
 11 shall appoint a member of the state investment council,  
 12 pursuant to Paragraph (8) of Subsection A of Section 6-8-2 NMSA  
 13 1978, who shall serve on an interim basis until confirmed by  
 14 the senate.

15 C. The four public members serving on the state  
 16 investment council that were appointed by the New Mexico  
 17 legislative council shall continue to serve until their terms  
 18 expire or they resign or are removed.

19 D. Members of the state investment council shall be  
 20 appointed pursuant to Paragraphs (4) through (7) of Subsection  
 21 A of Section 6-8-2 NMSA 1978 as vacancies occur on the board  
 22 pursuant to Subsection C of this section and shall serve on an  
 23 interim basis until confirmed by the senate. The four  
 24 appointing entities shall, by lot, determine the order in which  
 25 they will appoint replacement members to the council.

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underscored material = new  
 [bracketed material] = delete

