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## FISCAL IMPACT REPORT

ORIGINAL DATE 01/24/11  
 LAST UPDATED 03/15/11    **HB** \_\_\_\_\_

SPONSOR Sapient

SHORT TITLE Remove State Investment Officer from Boards    **SB** 82/aHJC

ANALYST Graeser

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	NFI	NA	Various

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

- Renewable Energy Transmission Authority
- Higher Education Department (on behalf of the Educational Trust Board)
- State Treasurer's Office (STO)
- State Investment Office (SIC)

### SUMMARY

#### Synopsis of House Judiciary amendment

House Judiciary amendment to Senate Bill 82 is purely technical. In the original bill, the membership of the Renewable Energy Transmission Authority was reduced from seven members to six members. The amendment conforms a reference in 62-16A-3 NMSA 1978 to the change in the original bill.

Since this is a House amendment to a Senate bill, the bill must return to the Senate for concurrence after the bill, as amended, passes the House.

#### Synopsis of Original Bill

Senate Bill 82 removes the State Investment Officer from membership on the boards of the New Mexico Finance Authority (NMFA), the Small Business Investment Corporation (SBIC), the New Mexico Renewable Energy Transmission Authority (RETA) and from the Education Trust Board (ETB).

## **FISCAL IMPLICATIONS**

No fiscal impact. Each of the named boards will lose a member, but the State Investment Officer does not receive per diem and mileage for service on the named boards.

## **SIGNIFICANT ISSUES**

The New Mexico Finance Authority’s membership would decrease from 12 members to 11 members. The Education Trust Board’s membership would decrease from five voting members to four voting members. The Small Business Investment Corporation’s membership would decrease from two government members and six public members to one government member (the State Treasurer) and six public members. The Renewable Transmission Authority’s membership would decrease from seven members to six members.

RETA points out that an even number of voting members (six) may lead to tie votes, with no provision for breaking a tie vote.

HED notes that the Education Trust Board has an unusual assignment:

“The ETB manages funds invested in the federally established 529 funds, so named because they were created under Section 529 of the Internal Revenue Code. 529 College Savings Programs provide compelling savings advantages, such as tax-deferred accumulation, federal tax-free earnings for qualified withdrawals, reductions in estate taxes, and special gift tax treatment. Additionally, 529 College Savings Programs offer personal control and flexibility over assets and beneficiaries. Under the New Mexico Education Trust Act (Section 21-21K-1 to 21-21K-7 NMSA 1978), an investor agrees to make investments into the education trust fund from time to time for the purpose of defraying the costs of attendance at institutions of higher education. Under Section 7-2-32 NMSA 1978, such investors are entitled to claim a deduction from net income in an amount equal to the payments made into the education trust fund up to the aggregate cost of attendance at the applicable institution of higher education. The ETB contracts with Oppenheimer Funds to manage the New Mexico investments; Oppenheimer manages more than \$260 billion in 529 funds nationwide.”

The four remaining members on the ETB include the Secretary of Higher Education, one member appointed by the governor (who could have investment knowledge), one member representing institutions of higher education (who also could have investment knowledge) and one member representing students at institutions of higher education (who might not have investment knowledge). Thus removing the State Investment Officer from this Board might have fiscal consequences as the Board might have to hire a contractor or employee to replace the SIO’s knowledge. However, the current board has elected to place the entire corpus of the investment fund with Oppenheimer Funds, leaving the subsequent investment of the funds in the hands of Oppenheimer.

## **PERFORMANCE IMPLICATIONS**

All agencies responding to this bill point out that the State Investment Officer is fully occupied in managing \$14.7 billion in state investments. Relieving the SIO of membership on the named boards will allow the SIO to perform the core functions of the Office of the State Investment

Council with less distraction. This might improve the State Investment Council's performance.

### **OTHER SUBSTANTIVE ISSUES**

The State Investment Office's analysis addresses the underlying issue involved in this bill and is restated below:

The State Investment Officer oversees the day-to-day investment of the state's \$14.7 billion permanent funds, and implements investment, policy and other directions of the State Investment Council. The SIC has 32 FTEs, about half of whom are investment professionals and the remainder accounting and support staff. More than 25% of the assets under management are managed directly by staff; with SIC staff exerting oversight over the other 75% of total assets. This is a task that demands the focus and diligence of State Investment Council, the State Investment Officer and the entire SIC staff.

Recent history at the SIC has shown that severe problems can occur when one individual has a significant amount of decision-making power and influence regarding state investments. The legislature acted in 2010 to put in place additional safeguards to limit the state investment officer's individual powers by removing the SIO from the Council and spreading out the decision-making authority of the SIO. This individual responsibility and authority has now been reassigned to the full Council. SB 82 seeks to further limit the current level of influence held by the SIO, and at the same time, free up his attention and resources solely to the management of New Mexico's permanent endowment and state client funds.

### **ALTERNATIVES**

RETA notes that the Secretary of Energy and Minerals, who currently serves on the RETA board in a non-voting capacity, could be designated as a voting member. This would restore the membership to an odd number of members, solving the voting tie problem.

Similarly, four members of the Education Trust Board might have difficulty with a tie vote. A fifth member could be added to the board to reinstate investment expertise and solve the tie vote problem.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The State Investment Officer would continue to serve on the boards of NMFA, SBIC, ETB and RETA. This service on multiple boards would continue to consume at least some of the SIO's time and energy that might better be put to the core functions of the State Investment Council's Office.

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