

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 269

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

AN ACT

RELATING TO EDUCATIONAL RETIREMENT; AUTHORIZING THE EDUCATIONAL
RETIREMENT BOARD TO SELECT A CUSTODIAL BANK AND TO HIRE
ATTORNEYS ON A CONTINGENT FEE BASIS; CREATING A SUSPENSE FUND.

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

SECTION 1. Section 22-11-6 NMSA 1978 (being Laws 1967,
Chapter 16, Section 130) is amended to read:

"22-11-6. BOARD--POWERS--DUTIES.--

A. The board shall:

~~[A.]~~ (1) properly and uniformly enforce the
Educational Retirement Act;

~~[B.]~~ (2) hire employees and delegate
administrative authority to these employees;

~~[C.]~~ (3) make an actuarial report on the
financial operation of the Educational Retirement Act to the

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underscoring material = new
[bracketed material] = delete

1 legislature at each regular session every odd-numbered year;

2 ~~[D.]~~ (4) accept donations, gifts or bequests;

3 and

4 ~~[E.]~~ (5) adopt regulations pursuant to the
5 Educational Retirement Act.

6 B. The board may:

7 (1) select and contract for the services of
8 one or more custodial banks. For purposes of this subsection,
9 "custodial bank" means a financial institution with the general
10 fiduciary duties to manage, control and collect the assets of
11 an investment fund, including receiving all deposits and paying
12 all disbursements as directed by staff, safekeeping of assets,
13 coordination of asset transfers, timely settlement of
14 securities transactions and accurate and timely reporting by
15 individual account and in total; and

16 (2) contract for legal services for litigation
17 matters on a contingent fee basis, subject to the provisions of
18 the Procurement Code; provided that:

19 (a) the board shall submit each proposed
20 contract to the attorney general for review of the contingency
21 fee. The attorney general's review shall take into account the
22 complexity of the factual and legal issues presented by the
23 claims to be pursued under the contract. If the attorney
24 general advises the board that the proposed contingency fee is
25 not reasonable, the board may nevertheless approve the contract

1 and the contingency fee if no fewer than four members vote for
 2 approval; and

3 (b) each prospective contractor seeking
 4 to represent the board on a contingency fee basis shall file
 5 with the board the disclosure required by Section 13-1-191.1
 6 NMSA 1978 disclosing all campaign contributions made to the
 7 governor, attorney general, state treasurer or any member of
 8 the board, or to a political committee that is intended to aid
 9 or promote the nomination or election of any candidate to a
 10 state office if the committee is: 1) established by any of the
 11 foregoing persons or their agents; 2) established in
 12 consultation with or at the request of any of the foregoing
 13 persons or their agents; or 3) controlled by one of the
 14 foregoing persons or their agents."

15 SECTION 2. Section 22-11-11 NMSA 1978 (being Laws 1967,
 16 Chapter 16, Section 135) is amended to read:

17 "22-11-11. EDUCATIONAL RETIREMENT FUND--SUSPENSE FUND.--

18 A. The "educational retirement fund" [~~is~~] and the
 19 "educational retirement suspense fund" are created.

20 B. The state treasurer shall be the custodian of
 21 the [~~fund~~] funds, and the board shall be the trustee of the
 22 [~~fund~~] funds.

23 C. All membership fees, contributions from members
 24 and local administrative units, securities evidencing the
 25 investment of money from the fund, interest, gifts, grants or

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1 bequests shall be deposited in the educational retirement fund.

2 D. All amounts received in satisfaction of a claim
3 brought by private attorneys on behalf of the board shall be
4 deposited into the educational retirement suspense fund. The
5 board shall disburse the compensation due the private
6 attorneys, together with reimbursement for reasonable costs and
7 expenses, in accordance with the terms of the contract with the
8 attorneys. After the disbursements have been made, the balance
9 of each deposit shall be distributed to the educational
10 retirement fund."

11 **SECTION 3.** Section 22-11-12 NMSA 1978 (being Laws 1967,
12 Chapter 16, Section 136, as amended) is amended to read:

13 "22-11-12. ~~FUND--~~SUSPENSE FUND--DISBURSEMENTS.--The state
14 treasurer shall make disbursements from the educational
15 retirement fund or the educational retirement suspense fund
16 only on warrants issued by the department of finance and
17 administration or through any other process as approved by the
18 department of finance and administration. Warrants for
19 disbursements from the educational retirement fund or the
20 educational retirement suspense fund shall be issued by the
21 department of finance and administration only upon voucher of
22 the director."