

1 SENATE BILL 329

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 Cynthia Nava

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10 AN ACT

11 RELATING TO EDUCATIONAL RETIREMENT; AUTHORIZING CERTAIN MEMBERS
12 OF THE EDUCATIONAL RETIREMENT BOARD TO APPOINT DESIGNEES TO
13 SERVE ON THE BOARD; SPECIFYING QUALIFICATIONS FOR THE
14 DESIGNEES.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. Section 22-11-3 NMSA 1978 (being Laws 1967,
18 Chapter 16, Section 127, as amended) is amended to read:

19 "22-11-3. EDUCATIONAL RETIREMENT BOARD--MEMBERS--TERMS--
20 VACANCIES.--

21 A. The "educational retirement board" is created.

22 B. The board shall be composed of seven members,
23 consisting of the following:

24 (1) the ~~[superintendent of public instruction]~~
25 secretary of public education, or a designee of the secretary

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1 who:

2 (a) is a resident of New Mexico;

3 (b) is a current employee of the public
4 education department; and

5 (c) possesses experience relevant to the
6 financial or fiduciary aspects of pension or investment fund
7 management;

8 (2) the state treasurer, or a designee of the
9 treasurer who:

10 (a) is a resident of New Mexico;

11 (b) is a current employee of the state
12 treasurer's office; and

13 (c) possesses experience relevant to the
14 financial or fiduciary aspects of pension or investment fund
15 management;

16 (3) one member to be elected for a term of
17 four years by members of the New Mexico association of
18 educational retirees;

19 (4) one member to be elected for a term of
20 four years by the members of the national education association
21 of New Mexico [~~education association~~];

22 (5) one member to be elected for a term of
23 four years by the New Mexico members of the American
24 association of university professors; and

25 (6) two members to be appointed by the

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1 governor for terms of four years each.

2 C. A designee of a board member shall have the same
3 responsibilities, duties, liabilities and immunities as the
4 board member, including the indemnification provided by
5 Subsection H of Section 22-11-13 NMSA 1978. The appointment of
6 a designee does not relieve the board member of the member's
7 responsibilities, duties, liabilities and immunities as a board
8 member, and the board member shall be fully responsible and
9 liable for the actions of the designee while serving on the
10 board.

11 [~~G-~~] D. In the initial composition of the board,
12 the member elected by the members of the American association
13 of university professors shall serve for a term of three years;
14 one member appointed by the governor shall serve for a term of
15 two years; and the other member appointed by the governor shall
16 serve for a term of one year.

17 [~~D-~~] E. Vacancies occurring in the [~~term~~] terms of
18 office of those members appointed by the governor or elected by
19 an association shall be filled either by the governor
20 appointing or the association electing a new member to fill the
21 unexpired term."

22 **SECTION 2.** Section 22-11-13 NMSA 1978 (being Laws 1967,
23 Chapter 16, Section 137, as amended) is amended to read:

24 "22-11-13. BOARD AUTHORITY TO INVEST THE FUND--PRUDENT
25 INVESTOR STANDARD--INDEMNIFICATION OF BOARD.--

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1 A. The board is authorized to invest or reinvest
2 the fund in accordance with the Uniform Prudent Investor Act.

3 B. The board shall provide quarterly performance
4 reports to the legislative finance committee and the department
5 of finance and administration. Annually, the board shall
6 ratify and provide its written investment policy, including any
7 amendments, to the legislative finance committee and the
8 department of finance and administration.

9 C. The board or its designated agent may enter into
10 contracts for the temporary exchange of securities for the use
11 by broker-dealers, banks or other recognized institutional
12 investors, for periods not to exceed one year, for a specified
13 fee or consideration. Such a contract shall not be entered
14 into unless the contract is fully secured by a collateralized,
15 irrevocable letter of credit running to the board, cash or
16 equivalent collateral of at least one hundred two percent of
17 the market value of the securities plus accrued interest
18 temporarily exchanged. This collateral shall be delivered to
19 the [~~state~~] fiscal agent of New Mexico or its designee
20 contemporaneously with the transfer of funds or delivery of the
21 securities. Such contract may authorize the board to invest
22 cash collateral in instruments or securities that are
23 authorized fund investments and may authorize payment of a fee
24 from the fund or from income generated by the investment of
25 cash collateral to the borrower of securities providing cash as

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1 collateral. The board may apportion income derived from the
2 investment of cash collateral to pay its agent in securities
3 lending transactions.

4 D. Commissions paid for the purchase or sale of any
5 securities pursuant to the provisions of the Educational
6 Retirement Act shall not exceed brokerage rates prescribed and
7 approved by national stock exchanges or by industry practice.

8 E. Securities purchased for the fund shall be held
9 in the custody of the state treasurer. At the direction of the
10 board, the state treasurer shall deposit with a bank or trust
11 company the securities for safekeeping or servicing.

12 F. The board may consult with the state investment
13 council or the state investment officer; may request from the
14 state investment council or the state investment officer any
15 information, advice or recommendations with respect to
16 investment of the fund; may utilize the services of the state
17 investment council or the state investment officer; and may act
18 upon any advice or recommendations of the state investment
19 council or the state investment officer. The state investment
20 council or the state investment officer shall render investment
21 advisory services to the board upon request and without expense
22 to the board. The board may also employ the investment
23 management services and related management services of a trust
24 company or national bank exercising trust powers or of an
25 investment counseling firm or brokers for the purchase and sale

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1 of securities, commission recapture and transitioning services
2 and may pay reasonable compensation for those services from
3 funds administered by the board.

4 G. The board shall annually provide for its members
5 no less than eight hours of training in pension fund investing,
6 fiduciary obligations or ethics. A member elected or appointed
7 to the board who fails to attend the training for two
8 consecutive years shall be deemed to have resigned from the
9 board.

10 H. Members of the board, including any designee
11 authorized by Paragraph (1) or (2) of Subsection B of Section
12 22-11-3 NMSA 1978, jointly and individually, shall be
13 indemnified from the fund by the state from all claims,
14 demands, suits, actions, damages, judgments, costs, charges and
15 expenses, including court costs and attorney fees, and against
16 all liability, losses and damages of any nature whatsoever that
17 members shall or may at any time sustain by reason of any
18 decision made in the performance of their duties pursuant to
19 this section."