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HOUSE BILL 21

**50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

INTRODUCED BY

Jim R. Trujillo

ENDORSED BY THE INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

AN ACT

RELATING TO PUBLIC FINANCES; IMPOSING A LIMIT ON THE PERCENTAGE  
OF LAND GRANT PERMANENT FUNDS THAT MAY BE INVESTED IN  
INTERNATIONAL EQUITIES.

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

**SECTION 1.** Section 6-8-7 NMSA 1978 (being Laws 1957,  
Chapter 179, Section 7, as amended) is amended to read:

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

A. Subject to the limitations, conditions and  
restrictions contained in policymaking regulations or  
resolutions adopted by the council, the council may make  
purchases, sales, exchanges, investments and reinvestments of  
the assets of all funds in accordance with the Uniform Prudent

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1 Investor Act. The state investment officer and the council are  
2 trustees of all funds under their control and shall see that  
3 money invested is at all times handled in the best interests of  
4 the state. The council may delegate administrative functions  
5 to the state investment officer.

6 B. The state investment officer shall formulate and  
7 recommend to the council for approval investment regulations or  
8 resolutions pertaining to the kind or nature of investments and  
9 limitations, conditions and restrictions upon the methods,  
10 practices or procedures for investment, reinvestment, purchase,  
11 sale or exchange transactions that should govern the activities  
12 of the investment office.

13 C. No more than twenty-five percent of the book  
14 value of the land grant permanent funds may be invested in  
15 international equities at any single time.

16 [~~G.~~] D. The council shall meet at least once each  
17 month, and as often as exigencies may demand, to consult with  
18 the state investment officer concerning the work of the  
19 investment office. The council shall have access to all files  
20 and records of the investment office and shall require the  
21 state investment officer to report on and provide information  
22 necessary to the performance of council functions. The council  
23 may hire one or more investment management firms to advise the  
24 council with respect to the council's overall investment plan  
25 for the investment of all funds managed by the investment

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1 office and pay reasonable compensation for such advisory  
2 services from the assets of the applicable funds, subject to  
3 budgeting and appropriation by the legislature. The terms of  
4 any such investment management services contract shall  
5 incorporate the statutory requirements for investment of funds  
6 under the council's jurisdiction.

7 ~~[D-]~~ E. The council shall provide an opportunity  
8 for public comment at meetings of the council. Advance notice  
9 of meetings shall be published on the council's web site and in  
10 a newspaper of general circulation at least ten days in advance  
11 of the meeting.

12 ~~[E-]~~ F. All funds managed by the state investment  
13 officer shall be managed in accordance with the Uniform Prudent  
14 Investor Act. The council may employ investment management  
15 services to invest the funds and may pay reasonable  
16 compensation for investment management services from the assets  
17 of the applicable funds, subject to budgeting and appropriation  
18 by the legislature.

19 ~~[F-]~~ G. The council, the state investment officer,  
20 any person providing investment advice to the council or state  
21 investment officer for a fee or other compensation and all  
22 persons exercising discretionary authority or control of funds  
23 under the management of the council are fiduciaries.

24 ~~[G-]~~ H. The council may contract for legal services  
25 for litigation on a contingent or partly contingent fee basis,

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1 subject to an expedited solicitation process devised and  
2 approved by the council; provided that:

3 (1) amounts recovered by the legal services  
4 contractor shall be deposited in the state investment council  
5 suspense fund;

6 (2) the council shall submit each proposed  
7 contract to the attorney general and the department for review  
8 of the contingency fee. The attorney general's and the  
9 department's review shall take into account the complexity of  
10 the factual and legal issues presented by the claims to be  
11 pursued under the contract. If the attorney general or the  
12 department advises the council that the proposed contingency  
13 fee is not reasonable, the council may nevertheless approve the  
14 contract and the contingency fee by a majority vote of its  
15 members; and

16 (3) each prospective legal services contractor  
17 seeking to represent the council on a contingent or partly  
18 contingent fee basis shall file with the council the disclosure  
19 required by Section 13-1-191.1 NMSA 1978 disclosing all  
20 campaign contributions made to the governor, attorney general,  
21 state treasurer or any member of the council, or to a political  
22 committee that is intended to aid or promote the nomination or  
23 election of any candidate to a state office if the committee  
24 is:

25 (a) established by any of the foregoing

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1 persons or their agents;

2 (b) established in consultation with or  
3 at the request of any of the foregoing persons or their agents;  
4 or

5 (c) controlled by one of the foregoing  
6 persons or their agents.

7 ~~[H.]~~ I. The council may select and contract for the  
8 services of one or more custodian banks for all funds under the  
9 council's management. For the purpose of this subsection,  
10 "custodian bank" means a financial institution with the general  
11 fiduciary duties to manage, control and collect the assets of  
12 an investment fund, including receiving all deposits and paying  
13 all disbursements as directed by staff, safekeeping of assets,  
14 coordination of asset transfers, timely settlement of  
15 securities transactions and accurate and timely reporting of  
16 the assets by individual account and in total.

17 ~~[I.]~~ J. For funds available for investment for more  
18 than one year, the council may contract with any state agency  
19 to provide investment advisory or investment management  
20 services, separately or through a pooled investment fund,  
21 provided the state agency enters into a joint powers agreement  
22 with the council and that state agency pays at least the direct  
23 cost of such services. Notwithstanding any statutory provision  
24 governing state agency investments, the council may invest  
25 funds available from a state agency pursuant to a joint powers

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1 agreement in any type of investment permitted for the land  
2 grant permanent funds under the prudent investor rule. In  
3 performing investment services for a state agency, the council  
4 and the state investment officer are exempt from the New Mexico  
5 Uniform Securities Act. As used in this subsection, "state  
6 agency" means any branch, agency, department, board,  
7 instrumentality, institution or political subdivision of the  
8 state, the New Mexico finance authority, the New Mexico  
9 mortgage finance authority and any tax-exempt private endowment  
10 entity whose sole beneficiary is a state agency.

11 [~~J~~] K. The state investment officer shall provide  
12 quarterly performance reports to the legislative finance  
13 committee. Annually, the state investment officer shall ratify  
14 and provide written investment policies, including any  
15 amendments, to the legislative finance committee."

16 **SECTION 2. CONTINGENT EFFECTIVE DATE.**--The provisions of  
17 this act shall become effective upon certification by the  
18 secretary of state that the constitution of New Mexico has been  
19 amended as proposed by a joint resolution of the second session  
20 of the fiftieth legislature entitled "A JOINT RESOLUTION  
21 PROPOSING TO AMEND ARTICLE 12, SECTION 7 OF THE CONSTITUTION OF  
22 NEW MEXICO TO PRESERVE THE LAND GRANT PERMANENT FUNDS BY  
23 INCREASING THE DUTY OF CARE AND CHANGING THE LIMITATIONS ON  
24 INVESTMENT."