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HOUSE BILL 405

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

Antonio "Moe" Maestas

AN ACT

RELATING TO STATE INVESTMENTS; REQUIRING THAT AT LEAST ONE-HALF OF THE STATE'S PERMANENT FUNDS INVESTMENTS IN PUBLICLY FINANCED INFRASTRUCTURE PROJECTS BE MADE IN PROJECTS IN NEW MEXICO.

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--IN-STATE INFRASTRUCTURE INVESTMENTS.--

A. Subject to the limitations, conditions and restrictions imposed by law or 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

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

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

14 C. The council shall meet at least ten times per
15 year, and as often as exigencies may demand, to consult with
16 the state investment officer concerning the work of the
17 investment office. The council shall have access to all files
18 and records of the investment office and shall require the
19 state investment officer to report on and provide information
20 necessary to the performance of council functions. The council
21 may hire investment management or consulting firms to advise
22 the council with respect to the council's investment decisions
23 for the investment of funds managed by the investment office
24 and pay reasonable compensation for such management or
25 consulting services from the assets of the applicable funds,

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1 subject to budgeting and appropriation by the legislature. The
2 terms of any such investment management or consulting services
3 contract shall incorporate the statutory requirements for
4 investment of funds under the council's jurisdiction. Prior to
5 being hired, a prospective investment management, advisory or
6 consulting services firm shall submit to the council a
7 disclosure detailing all campaign contributions made within the
8 last two years by the firm or the principals of the firm to any
9 member of the council, or to a political committee or other
10 entity that is intended to aid or promote the nomination or
11 election of any council member to a political office.

12 D. The council shall provide an opportunity for
13 public comment at meetings of the council. Advance notice of
14 meetings shall be published on the council's [~~web site~~] website
15 and in a newspaper of general circulation at least ten days in
16 advance of the meeting.

17 E. All funds managed by the state investment
18 officer shall be managed in accordance with the Uniform Prudent
19 Investor Act. The council may form and use committees to study
20 and make recommendations to the council. Prior to commencing
21 work for the council, a committee member who is not a member of
22 the council shall submit to the council a disclosure detailing
23 all campaign contributions made within the last two years to
24 any member of the council or to a political committee or other
25 entity that is intended to aid or promote the nomination or

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1 election of any council member to a political office.

2 F. Fiduciaries of the permanent funds are:

3 (1) the council;

4 (2) the state investment officer and
5 investment office staff;

6 (3) any person providing investment advice to
7 the council, the state investment officer or investment office
8 staff for an investment management, advisory or consulting
9 services fee; and

10 (4) all persons exercising discretionary
11 authority over or control of funds under the management of the
12 council.

13 G. The council may contract for legal services for
14 litigation on a contingent or partly contingent fee basis,
15 subject to an expedited solicitation process devised and
16 approved by the council; provided that:

17 (1) amounts recovered by the legal services
18 contractor shall be deposited in the state investment council
19 suspense fund;

20 (2) the council shall submit each proposed
21 contract to the attorney general and the department for review
22 of the contingency fee. The attorney general's and the
23 department's review shall take into account the complexity of
24 the factual and legal issues presented by the claims to be
25 pursued under the contract. If the attorney general or the

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1 department advises the council that the proposed contingency
2 fee is not reasonable, the council may nevertheless approve the
3 contract and the contingency fee by a majority vote of its
4 members; and

5 (3) each prospective legal services contractor
6 seeking to represent the council on a contingent or partly
7 contingent fee basis shall file with the council the disclosure
8 required by Section 13-1-191.1 NMSA 1978 disclosing all
9 campaign contributions made to the governor, attorney general,
10 state treasurer or any member of the council, or to a political
11 committee that is intended to aid or promote the nomination or
12 election of any candidate to a state office if the committee
13 is:

14 (a) established by any of the foregoing
15 persons or their agents;

16 (b) established in consultation with or
17 at the request of any of the foregoing persons or their agents;
18 or

19 (c) controlled by one of the foregoing
20 persons or their agents.

21 H. The council may select and contract for the
22 services of one or more custodian banks for all funds under the
23 council's management. For the purpose of this subsection,
24 "custodian bank" means a financial institution with the general
25 fiduciary duties to manage, control and collect the assets of

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1 an investment fund, including receiving all deposits and paying
2 all disbursements as directed by staff, safekeeping of assets,
3 coordination of asset transfers, timely settlement of
4 securities transactions and accurate and timely reporting of
5 the assets by individual account and in total.

6 I. For funds available for investment for more than
7 one year, the council may contract with any state agency to
8 provide investment advisory or investment management services,
9 separately or through a pooled investment fund; provided that
10 the state agency enters into a joint powers agreement with the
11 council and that the state agency pays at least the direct cost
12 of such services. Notwithstanding any statutory provision
13 governing state agency investments, the council may invest
14 funds available from a state agency pursuant to a joint powers
15 agreement in any type of investment permitted for the land
16 grant permanent funds under the prudent investor rule. In
17 performing investment services for a state agency, the council
18 and the state investment officer and investment office staff
19 are exempt from the New Mexico Uniform Securities Act. As used
20 in this subsection, "state agency" means any branch, agency,
21 department, board, instrumentality, institution or political
22 subdivision of the state, the New Mexico finance authority, the
23 New Mexico mortgage finance authority and any tax-exempt
24 private endowment entity whose sole beneficiary is a state
25 agency or whose beneficiaries are students attending a public

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1 educational institution in the state.

2 J. The state investment officer shall provide
3 quarterly performance reports to the legislative finance
4 committee. Annually, the state investment officer shall ratify
5 and provide written investment policies, including any
6 amendments, to the legislative finance committee.

7 K. Council members, the state investment officer
8 and investment office staff and committee members appointed by
9 the council, jointly and severally, shall be indemnified by the
10 state, out of the permanent funds, from all claims, demands,
11 suits, actions, damages, judgments, costs, charges and
12 expenses, including court costs and attorney fees, against all
13 claims, liability, losses or damages arising from any decisions
14 made or actions taken while acting within the scope of duty and
15 pursuant to law as a council member, the state investment
16 officer, investment office staff or a committee member
17 appointed by the council. Following indemnification, if it is
18 shown that the indemnified person acted fraudulently or with
19 intentional malice, the state shall have the right to recover
20 from the indemnified person any amount expended under this
21 subsection.

22 L. The council shall make at least one-half of the
23 permanent funds investments in publicly financed infrastructure
24 projects it makes in projects in New Mexico."