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FISCAL IMPACT REPORT

ORIGINAL DATE 2/9/18

SPONSOR McSorley LAST UPDATED _____ HB _____

SHORT TITLE Change State Investment Council Membership SB 199

ANALYST Iglesias

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
--	\$0.1	\$0.1	\$0.2	Recurring	SIC Operating

Parenthesis () indicate expenditure decreases

SOURCES OF INFORMATION

LFC Files

Responses Received From

State Investment Council (SIC)

State Land Office (SLO)

Responses Not Received From

State Treasurer's Office (STO)

Department of Finance and Administration (DFA)

SUMMARY

Synopsis of Bill

Senate Bill 199 amends statutes governing the State Investment Council (SIC) membership, leadership, and meeting attendance requirements. The bill removes the Governor from the council, who would be replaced by an initial member appointed by the Dean of the School of Management at the University of New Mexico for alternating terms, and for all other terms with a member appointed by the Dean of the College of Business at New Mexico State University. In making its four appointments, the Legislative Council would be prohibited from appointing anyone employed by SIC and could appoint no more than two members of the same political party. In making his or her two appointments, the Governor also would be prohibited from appointment anyone employed by the SIC.

This bill allows the council to name a chair and vice chair from among its members, rather than the Governor being the chair and the SIC selecting the vice chair.

In addition to the existing bases for removal of an appointed member, the bill would include a member's failure to attend at least 80 percent of the regularly scheduled SIC meetings in a calendar year.

The bill also includes a variety of language cleanup.

The effective date of this bill is July 1, 2018

FISCAL IMPLICATIONS

This legislation would create a minor impact on the SIC operating budget related to additional per diem payments to the new member who might be traveling from outside of Santa Fe to attend meetings. The additional costs are expected to be minimal.

SIGNIFICANT ISSUES

Currently, SIC is chaired by the Governor and includes the State Treasurer; the Commissioner of Public Lands; the secretary for the Department of Finance and Administration; the chief financial officer for a state university; four public members appointed by the legislative council; and two public members appointed by the Governor.

In 2009, in response to allegations of pay-to-play issues, the New Mexico Legislative Council Service (LCS) and the State Board of Finance retained Ennis, Knupp & Associates, Inc. (EnnisKnupp) to conduct an independent operational and fiduciary review of the governance, organizational structure, and current policies, procedures, and practices of the New Mexico State Investment Office (NMSIO), which includes the Council and the NMSIO. Their report, Fiduciary Review of the State Investment Council dated February 28, 2010 included findings, supplemental information and 82 best practice recommendations.

Removal Process. This bill appears to address the EnnisKnupp recommendation to “*allow for the removal of members when attendance is below 80 percent.*” According to SIC, this recommendation was accomplished with legislation passed in 2010 that provided “for the member’s failure to attend three consecutive meetings.” However, SIC states:

“The new language does not take into consideration that the 2015 legislation changed the number of times the Council will meet. The Council now meets a minimum of 10 times per year and not monthly. Under [this bill], if a member misses two meetings in a calendar year, the member’s attendance is below 80 percent and may be dismissed by the person or entity that made the appointment. [This bill] does not speak to whether this stipulation is an automatic requirement of the law, or if it is left to the discretion of the appointing body.

[This bill] also does not address the specific procedures for removing a Council member from the SIC who is in violation of the 80 percent attendance requirement, nor does it provide for due process in extenuating circumstances if two meetings are missed in a calendar year. It also does not specify if attending a meeting by teleconference is acceptable or recommend how many meetings attended by teleconference in a calendar year are allowed.”

According to SIC, the EnnisKnupp recommendation to “*limit participation and voting at Council meetings by teleconference to no more than once every 12 months,*” is still a best practice recommendation the Council has yet to adopt, complete or agree upon, though SIC states no current members make frequent use of this allowance.

Chair and Vice Chair. The Governor by statute is the chair of the New Mexico State Investment Council. This bill changes the chair and vice-chair of the SIC to be selected from the members. The Council already elects a vice-chair. SIC states this is in line with the recommendations made in the EnnisKnupp report and one the Council cannot accomplish without a statutory change.

The EnnisKnupp report discusses the current composition of the SIC with regard to the influence of the Governor and the need for energetic leadership by the chair of the Council. The 2010 report states, “*Best practice is to allow the Council to elect its own officers, including a Chair and Vice-Chair.... We find that groups generally function more effectively if a leader is determined based upon the group’s confidence in that individual’s leadership abilities and ability to commit extra time.*”

University Appointments. This bill removes the Governor from the SIC and replaces the position for alternating terms by allowing the Dean of the School of Management at the University of New Mexico and the Dean of the College of Business at New Mexico State University to make an appointment.

According to SIC, this change does not align with the EnnisKnupp recommendations. The EnnisKnupp report does discuss the Council size, composition of ex-officio and appointed members and the influence of the Governor. The report states “*Balance the number of Governor appointees with legislative appointees or other ex-officio members who are not part of the executive branch,*” which SIC states was largely addressed by the legislative action adopted in 2010. SIC further indicates the EnnisKnupp report does not recommend the removal of any council members, and also provided the following for consideration:

“The governor already appoints a CFO of a state university to serve on the Council. This bill gives another voice to a university, creating two influential voices on the Council from the state’s university system – or even from the same university. Given the somewhat small portion of the land grant permanent fund distributions going to universities (UNM and NMSU receive less than 2 percent of the payout) relative to public schools, which receive greater than 85 percent, but have no specific representatives on the Council, this begs the question whether another university directed fiduciary is appropriate.”

Political Influence on Investment Decisions. The following statements on this issue were provided by SIC:

“If the purpose of removing the Governor from the SIC is to remove any potential for political influence on investment decisions, it falls short by only removing one elected member, leaving the Commissioner of Public Lands and the State Treasurer in place.

New Mexico has an unfortunate history of inappropriate political influence corrupting the process of state investing. This includes the criminal convictions of two former state treasurers for public corruption. Other instances did not rise to the level of criminal prosecution, but required civil litigation. The SIC today continues to pursue legal recoveries

related to the mess created a decade ago, after placement agents with personal connections to the then-Governor Richardson and the investment officer at the time, were paid finders fees on state investments.

More recently, pay-to-play questions arose after external managers employed by SIC and the Education Retirement Board were revealed to have made previous political contributions to the Republican Governor's Association, which the current Governor [Martinez] formerly chaired. The managers in question denied quid pro quo, and indicate (and records confirm) they often contribute politically across party lines as a standard course of business. The Securities and Exchange Commission views such contributions as completely legal if lacking the pay-to-play element, and both SIC and ERB contend neither Governor Martinez nor her office has ever directed or influenced these investment processes. That said, the appearance led to media headlines and new public concerns about politics playing any role in the investment process. Removal of one of only three elected officials from the SIC would not seem to fully address these concerns.”

OTHER SUBSTANTIVE ISSUES

Additional issues are discussed at length in the bill analysis submitted by SIC.

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