

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 9

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Steven P. Neville

FOR THE INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

AN ACT

RELATING TO PUBLIC FINANCES; CHANGING THE MEMBERSHIP, POWERS
AND DUTIES OF THE STATE INVESTMENT COUNCIL; PROVIDING
ELIGIBILITY REQUIREMENTS FOR CERTAIN MEMBERS; CHANGING MEETING
FREQUENCY AND NOTICE REQUIREMENTS; PROVIDING FOR THE ELECTION
OF THE CHAIR AND VICE CHAIR OF THE COUNCIL; EXTENDING REPORTING
DEADLINES; AUTHORIZING THE COUNCIL TO INVEST FUNDS FOR THE
SMALL BUSINESS INVESTMENT CORPORATION.

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

SECTION 1. Section 6-8-2 NMSA 1978 (being Laws 1957,
Chapter 179, Section 2, as amended) is amended to read:

"6-8-2. STATE INVESTMENT COUNCIL.--

A. There is created a "state investment council".

The council shall be composed of:

(1) the ~~governor~~ secretary;

.190781.1

underscoring material = new
~~bracketed material~~ = delete

underscored material = new
[bracketed material] = delete

1 (2) a member appointed by the state treasurer
2 with the advice and consent of the senate;

3 (3) a member appointed by the commissioner of
4 public lands with the advice and consent of the senate;

5 ~~[(4) the secretary;~~

6 ~~(5) the chief financial officer of a state~~
7 ~~institution of higher education appointed by the governor with~~
8 ~~the advice and consent of the senate;~~

9 ~~(6) four members appointed by the New Mexico~~
10 ~~legislative council with the advice and consent of the senate;~~
11 ~~provided that no more than two members shall be members of the~~
12 ~~same political party;]~~

13 (4) one public member appointed by the
14 president pro tempore of the senate with the advice and consent
15 of the senate;

16 (5) one public member appointed by the
17 minority floor leader of the senate with the advice and consent
18 of the senate;

19 (6) one public member appointed by the speaker
20 of the house of representatives with the advice and consent of
21 the senate;

22 (7) one public member appointed by the
23 minority floor leader of the house of representatives with the
24 advice and consent of the senate; and

25 ~~[(7) two]~~ (8) four members appointed by the

.190781.1

underscored material = new
[bracketed material] = delete

1 governor with the advice and consent of the senate; provided
2 that no more than two members shall be members of the same
3 political party.

4 B. The chair [~~of the council shall be the governor~~]
5 and the vice chair of the council shall be selected by the
6 council from among the members appointed pursuant to Paragraphs
7 (2) through (8) of Subsection A of this section for terms of
8 two years; provided that the chair and the vice chair shall
9 serve staggered terms and shall serve no more than two
10 consecutive terms and the vice chair elected in 2012 shall
11 serve a one-year term to allow for staggered terms.

12 C. All actions of the council shall be by majority
13 vote, and a majority of the members shall constitute a quorum.

14 [~~G.~~] D. Members of the council appointed pursuant
15 to Paragraphs [~~(6) and (7)~~] (2) through (8) of Subsection A of
16 this section [~~shall be reimbursed~~] are entitled to receive per
17 diem and mileage pursuant to the provisions of the Per Diem and
18 Mileage Act."

19 SECTION 2. Section 6-8-3 NMSA 1978 (being Laws 1957,
20 Chapter 179, Section 3, as amended) is amended to read:

21 "6-8-3. COUNCIL TERMS AND QUALIFICATIONS.--

22 A. Members of the council appointed pursuant to
23 Paragraphs [~~(6) and (7)~~] (2) through (8) of Subsection A of
24 Section 6-8-2 NMSA 1978 [~~with the advice and consent of the~~
25 ~~senate~~] shall serve for staggered terms of five years. Members

.190781.1

underscored material = new
[bracketed material] = delete

1 of the council shall serve until their successors are appointed
2 and have qualified.

3 B. The members of the council appointed pursuant to
4 Paragraphs [~~(6) and (7)~~] (2) through (8) of Subsection A of
5 Section 6-8-2 NMSA 1978 shall:

6 (1) be qualified by competence and no less
7 than ten [~~years~~] years' experience in the field of investment
8 [~~or finance~~] management, investment accounting, investment risk
9 management or governance in public or private entities;

10 (2) be citizens of the United States and
11 residents of New Mexico; and

12 (3) not be eligible for membership on the
13 council if convicted of a felony or of a misdemeanor involving
14 moral turpitude.

15 C. A member of the council shall not have had any
16 contracts to do business with the state investment council, the
17 investment office, the office of the state treasurer, the
18 educational retirement board, the public employees retirement
19 association, the New Mexico finance authority or the state
20 board of finance for a period of two calendar years prior to
21 the person's appointment to the council and shall not enter
22 into any contracts to do business with any of the named state
23 agencies or instrumentalities for a period of two calendar
24 years after the end of the term for which the member was
25 appointed. Members of the council and officers and employees

.190781.1

underscored material = new
[bracketed material] = delete

1 of the council shall be governed by the provisions of the
2 Governmental Conduct Act. Nothing in this section or in the
3 Governmental Conduct Act shall be construed as prohibiting an
4 officer of a financial institution from participating as a
5 member of the council in setting general policies of the
6 council, nor shall any provision of the Governmental Conduct
7 Act prohibit the council or the state treasurer from depositing
8 funds under the jurisdiction of the council in any financial
9 institution. A council member shall not hold an office or
10 employment in a political party.

11 ~~[G. The member appointed pursuant to Paragraph (5)~~
12 ~~of Subsection A of Section 6-8-2 NMSA 1978 shall serve at the~~
13 ~~pleasure of the governor.]~~

14 D. A member of the council appointed pursuant to
15 Paragraphs ~~[(6) and (7)]~~ (2) through (8) of Subsection A of
16 Section 6-8-2 NMSA 1978 may be removed from the council by the
17 appointing person or entity, for failure to attend three
18 consecutive meetings or other cause, in the manner provided for
19 removal of members of boards of regents under Article 12,
20 Section 13 of the constitution of New Mexico. A vacancy in the
21 membership of the council occurring other than by expiration of
22 term shall be filled in the same manner as the original
23 appointment but for the unexpired term only."

24 **SECTION 3.** Section 6-8-4 NMSA 1978 (being Laws 1957,
25 Chapter 179, Section 4, as amended) is amended to read:

.190781.1

underscored material = new
[bracketed material] = delete

1 "6-8-4. INVESTMENT OFFICE--STATE INVESTMENT OFFICER--
2 TERMS.--

3 A. There is established an "investment office".
4 The chief administrative officer of the office shall be known
5 as the "state investment officer".

6 B. The state investment officer shall be appointed
7 by the council with the advice and consent of the senate. The
8 state investment officer shall devote the officer's entire time
9 and attention to the duties of that office and shall not engage
10 in any other occupation or profession or hold any other public
11 office, appointive or elective. The state investment officer
12 shall be a person qualified, by training and investment
13 experience, to direct the work of the investment office and
14 shall have had at least five years' professional experience as
15 an investment officer. The state investment officer shall
16 receive a salary to be determined by the [~~state investment~~]
17 council [~~but in no case less than fifty thousand dollars~~
18 ~~(\$50,000) annually~~].

19 C. The state investment officer shall serve for an
20 initial term of two years beginning July 1, 1981 and thereafter
21 for terms of four years. The state investment officer may be
22 removed from office by the council for cause."

23 SECTION 4. Section 6-8-5 NMSA 1978 (being Laws 1957,
24 Chapter 179, Section 5, as amended) is amended to read:

25 "6-8-5. BOND--STAFF--BUDGET.--

.190781.1

underscored material = new
[bracketed material] = delete

1 A. Before the state investment officer or other
2 responsible employee of the investment office enters upon [~~his~~]
3 the officer's or employee's duties, the secretary shall require
4 an individual bond or include the state investment officer and
5 other responsible employees under a blanket bond for an amount
6 and for a coverage deemed best to protect the state's interest.
7 The bond premiums shall be paid by the state.

8 B. The state investment officer shall annually
9 prepare a budget for administering and investing all funds
10 managed by the investment office, which shall be reviewed by
11 the council. Any funds provided for the operating budget of
12 the investment office shall be appropriated from the assets of
13 the land grant permanent funds, the severance tax permanent
14 fund, funds available for investment pursuant to Subsection [G]
15 I of Section 6-8-7 NMSA 1978 or any other funds managed by the
16 investment office, as authorized by law; however, in regard to
17 the land grant permanent funds, appropriation shall be made
18 from earnings on investments of the land grant permanent funds
19 before distribution to the income funds during the period prior
20 to the date the United States congress consents to the
21 provisions of Constitutional Amendment 1 approved at the 1996
22 general election.

23 C. Amounts budgeted or appropriated from the land
24 grant permanent funds and the severance tax permanent fund for
25 the costs of administering and investing those funds shall be

.190781.1

underscored material = new
[bracketed material] = delete

1 in addition to the amounts distributed to the beneficiaries of
2 the land grant permanent funds and to the general fund from the
3 severance tax permanent fund as provided by law; provided that
4 amounts budgeted or appropriated from the land grant permanent
5 funds shall be made from earnings on investments of the funds
6 before distribution to the income funds during the period prior
7 to the date the United States congress consents to the
8 provisions of Constitutional Amendment 1 approved at the 1996
9 general election.

10 D. The state investment officer shall appoint all
11 employees of the investment office."

12 SECTION 5. Section 6-8-7 NMSA 1978 (being Laws 1957,
13 Chapter 179, Section 7, as amended) is amended to read:

14 "6-8-7. POWERS AND DUTIES OF THE STATE INVESTMENT COUNCIL
15 AND STATE INVESTMENT OFFICER--INVESTMENT POLICY--INVESTMENT
16 MANAGERS.--

17 A. Subject to the limitations, conditions and
18 restrictions contained in policymaking regulations or
19 resolutions adopted by the council, the council may make
20 purchases, sales, exchanges, investments and reinvestments of
21 the assets of all funds in accordance with the Uniform Prudent
22 Investor Act. The state investment officer and the council are
23 trustees of all funds under their control and shall see that
24 money invested is at all times handled in the best interests of
25 the state. The council may delegate administrative and

.190781.1

underscored material = new
[bracketed material] = delete

1 investment-related functions to the state investment officer.

2 B. The state investment officer shall formulate and
3 recommend to the council for approval investment [~~regulations~~
4 ~~or resolutions~~] policies pertaining to the kind or nature of
5 investments and limitations, conditions and restrictions upon
6 the methods, practices or procedures for investment,
7 reinvestment, purchase, sale or exchange transactions that
8 should govern the activities of the investment office.

9 C. The council shall meet [~~at least once each~~
10 ~~month, and as often as exigencies may demand~~] no fewer than ten
11 times annually and at the call of the chair or when three
12 members request a meeting in writing, to consult with the state
13 investment officer concerning the work of the investment
14 office. The council shall have access to all files and records
15 of the investment office and shall require the state investment
16 officer to report on and provide information necessary to the
17 performance of council functions. The council may hire one or
18 more investment management or consulting firms to advise the
19 council with respect to the council's [~~overall investment plan~~
20 ~~for the investment of all funds managed by the investment~~
21 ~~office~~] investments and pay reasonable compensation for such
22 advisory services from the assets of the applicable funds,
23 subject to budgeting and appropriation by the legislature. The
24 terms of any such investment management services contract shall
25 incorporate the statutory requirements for investment of funds

.190781.1

underscored material = new
[bracketed material] = delete

1 under the council's jurisdiction.

2 D. The council shall provide an opportunity for
3 public comment at meetings of the council. Advance notice of
4 meetings shall be published on the council's web site [~~and in a~~
5 ~~newspaper of general circulation~~] at least ten days in advance
6 of the meeting.

7 E. All funds managed by the [~~state investment~~
8 ~~officer~~] council shall be managed in accordance with the
9 Uniform Prudent Investor Act. [~~The council may employ~~
10 ~~investment management services to invest the funds and may pay~~
11 ~~reasonable compensation for investment management services from~~
12 ~~the assets of the applicable funds, subject to budgeting and~~
13 ~~appropriation by the legislature.~~]

14 F. The council, the state investment officer, any
15 person providing investment advice to the council [~~or~~], state
16 investment officer or investment office staff for a fee or
17 other compensation and all persons exercising discretionary
18 authority or control of funds under the management of the
19 council are fiduciaries.

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

24 (1) amounts recovered by the legal services
25 contractor shall be deposited in the state investment council

underscoring material = new
~~[bracketed material] = delete~~

1 suspense fund;

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

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

21 (a) established by any of the foregoing
22 persons or their agents;

23 (b) established in consultation with or
24 at the request of any of the foregoing persons or their agents;
25 or

.190781.1

underscored material = new
[bracketed material] = delete

1 (c) controlled by one of the foregoing
2 persons or their agents.

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

13 I. For funds available for investment for more than
14 one year, the council may contract with any state agency to
15 provide investment advisory or investment management services,
16 separately or through a pooled investment fund, provided the
17 state agency enters into a joint powers agreement with the
18 council and that state agency pays at least the direct cost of
19 such services. Notwithstanding any statutory provision
20 governing state agency investments, the council may invest
21 funds available from a state agency pursuant to a joint powers
22 agreement in any type of investment permitted for the land
23 grant permanent funds under the prudent investor rule. In
24 performing investment services for a state agency, the council
25 [~~and~~], the state investment officer and investment office staff

.190781.1

underscored material = new
[bracketed material] = delete

1 are exempt from the New Mexico Uniform Securities Act. As used
2 in this subsection, "state agency" means any branch, agency,
3 department, board, instrumentality, institution or political
4 subdivision of the state, the New Mexico finance authority, the
5 New Mexico mortgage finance authority, the small business
6 investment corporation and any tax-exempt private endowment
7 entity whose sole beneficiary is a state agency.

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

14 SECTION 6. Section 6-8-14 NMSA 1978 (being Laws 1957,
15 Chapter 179, Section 14, as amended) is amended to read:

16 "6-8-14. MONTHLY REPORTS.--No later than [~~ten~~] thirty
17 days after the close of each month, the state investment
18 officer shall submit to the secretary and the [~~state~~
19 ~~investment~~] council a report of the operations of the office
20 during the past month. Each report shall give a complete
21 statement of the state investment portfolio as of the time of
22 the report and, in addition, shall include a detailed summary
23 of the month's investment, reinvestment, purchase, sale and
24 exchange transactions, setting forth the investments bought,
25 sold or exchanged, the dates thereof, the prices paid or

.190781.1

underscored material = new
[bracketed material] = delete

1 obtained, the names of the dealers involved, fees paid for each
2 transaction, disclosure of contractor arrangements and a
3 statement of the funds or accounts referred to herein. [~~The~~
4 ~~reports shall also be circulated to a mailing list of~~
5 ~~investment bankers and brokers recommended by the council.~~]
6 The reports shall be published on the web [~~sites~~] site of the
7 council [~~the legislature and the department of finance and~~
8 ~~administration~~] and shall be open for inspection to the public
9 and the press in the office of the state investment officer."

10 SECTION 7. Section 6-8-20 NMSA 1978 (being Laws 1987,
11 Chapter 219, Section 3, as amended) is amended to read:

12 "6-8-20. PRIVATE EQUITY INVESTMENT ADVISORY COMMITTEE
13 CREATED--MEMBERSHIP--DUTIES--TERMS--LIABILITIES--CONFLICT OF
14 INTEREST.--

15 A. There is created the "private equity investment
16 advisory committee" to the council. The committee consists of
17 the state investment officer, a member of the council appointed
18 by the council and three members who are qualified by
19 competence and experience in finance and investment and
20 knowledgeable about the private equity investment process and
21 who are appointed by the council.

22 B. Members appointed by the council, except the
23 council member, shall be appointed for three-year terms;
24 provided that the terms of the initial committee members shall
25 be staggered so that the term of one member expires each year.

.190781.1

underscoring material = new
[bracketed material] = delete

1 After the initial appointments, all appointed members shall be
2 appointed for three-year terms. Members shall serve until
3 their successors are appointed. A vacancy occurring other than
4 by expiration of term shall be filled in the same manner as the
5 original appointment, but only for the unexpired term.

6 C. The committee shall review and make
7 recommendations to the council on investments authorized
8 pursuant to Sections 7-27-5.15 and 7-27-5.26 NMSA 1978 and all
9 other private equity investments and shall advise the council
10 in matters and policies related to such investments. The
11 committee shall establish policies for national private equity
12 fund investments, New Mexico private equity fund investments
13 and New Mexico film [~~private equity fund~~] investments [~~not less~~
14 ~~often than annually~~] and shall make copies available to
15 interested parties.

16 D. Members of the committee shall receive per diem
17 and mileage as provided for nonsalaried public officers in the
18 Per Diem and Mileage Act and shall receive no other
19 compensation, perquisite or allowance.

20 E. The committee shall elect annually a chair from
21 among its members and may elect other officers as necessary.
22 The committee shall meet upon the call of the chair or the
23 state investment officer.

24 F. Members of the committee are public employees
25 within the meaning of the Tort Claims Act and are entitled to

.190781.1

underscored material = new
[bracketed material] = delete

1 all immunity and indemnification provided under that act.

2 G. A person shall not be a member of the committee
3 if any recommendation, action or decision of the committee will
4 or is likely to result in direct, measurable economic gain to
5 that person or that person's employer.

6 H. The state investment officer may enter into
7 contracts with investment advisors for private equity fund
8 investments and film fund investments authorized pursuant to
9 Sections 7-27-5.15 and 7-27-5.26 NMSA 1978 and all other
10 private equity investments and may pay budgeted expenses for
11 the advisors from the assets of any fund administered under the
12 supervision of the council, as applicable.

13 I. As used in this section, "private equity
14 investments" means any legal entity that has as its primary
15 business activity the investment of funds in return for equity
16 in or debt of businesses for the purpose of providing capital
17 for startup, expansion, new product development,
18 recapitalization or a similar business purpose."

19 **SECTION 8.** Section 58-29-4 NMSA 1978 (being Laws 2000,
20 Chapter 97, Section 6, as amended) is amended to read:

21 "58-29-4. SMALL BUSINESS INVESTMENT CORPORATION CREATED--
22 POWERS OF THE CORPORATION.--

23 A. The "small business investment corporation" is
24 created as a nonprofit, independent, public corporation. The
25 corporation may:

.190781.1

underscored material = new
[bracketed material] = delete

1 (1) sue and be sued in all actions arising out
2 of any act or omission in connection with its business or
3 affairs;

4 (2) enter into any contracts or obligations
5 relating to the corporation that are authorized or permitted by
6 law;

7 (3) cooperate with small business development
8 centers, regional economic development districts and parties
9 that have demonstrated abilities and relationships in providing
10 financial services to new and emerging businesses;

11 (4) make investments that consider the
12 enhancement of economic development objectives of the state as
13 described in the Small Business Investment Act; and

14 (5) make, alter or repeal such rules with
15 respect to the corporation's operations as are necessary to
16 carry out its functions and duties in the administration of the
17 Small Business Investment Act.

18 B. The corporation shall not be considered a state
19 agency for any purpose; provided, however, that the corporation
20 may be considered a state agency for the purpose of contracting
21 with the state investment council for the investment of funds.

22 The corporation is exempted from the provisions of the
23 Personnel Act and the Procurement Code.

24 C. Except as provided in the Tort Claims Act, the
25 state shall not be liable for any obligations incurred by the

.190781.1

underscored material = new
~~[bracketed material] = delete~~

1 corporation."

2 SECTION 9. TEMPORARY PROVISION--TRANSITION MEMBERSHIP OF
3 STATE INVESTMENT COUNCIL.--

4 A. On July 1, 2013, the governor, state treasurer,
5 commissioner of public lands and chief financial officer
6 appointed by the governor are no longer members of the state
7 investment council.

8 B. Within thirty days of July 1, 2013, the
9 governor, state treasurer and commissioner of public lands
10 shall appoint members of the state investment council, pursuant
11 to Paragraphs (2), (3) and (8) of Subsection A of Section 6-8-2
12 NMSA 1978, who shall serve on an interim basis until confirmed
13 by the senate.

14 C. The four public members serving on the state
15 investment council who were appointed by the New Mexico
16 legislative council shall continue to serve until their terms
17 expire or they resign or are removed.

18 D. Members of the state investment council shall be
19 appointed pursuant to Paragraphs (4) through (7) of Subsection
20 A of Section 6-8-2 NMSA 1978 as vacancies occur on the board
21 pursuant to Subsection C of this section and shall serve on an
22 interim basis until confirmed by the senate. The four
23 appointing entities shall, by lot, determine the order in which
24 they will appoint replacement members to the council.

25 SECTION 10. EFFECTIVE DATE.--The effective date of the
.190781.1

underscoring material = new
[bracketed material] = delete

1 provisions of this act is July 1, 2013.

2 - 19 -

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

.190781.1