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FISCAL IMPACT REPORT

ORIGINAL DATE 01/31/13
 SPONSOR Neville LAST UPDATED 03/08/13 HB _____
 SHORT TITLE State Investment Council Changes SB 9/aSRC/aSFC/aSFI#1/aHVEC
 ANALYST Walker-Moran

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$0.0	\$1.0 - \$10.0	\$1.0 - \$10.0	\$2.0 - \$20.0	Recurring	State Investment Council

(Parenthesis () Indicate Expenditure Decreases)

Responses Received From
 State Investment Council (SIC)
 Attorney General’s Office (AGO)
 Office of the State Auditor (OSA)
 Department of Finance and Administration (DFA)
 State Land Office (SLO)

SUMMARY

Synopsis of HEVC Amendment

Membership change: The House Voters and Elections Committee amendment gives the governor the authority to appoint three members (instead of four).

Synopsis of SFI #1 Amendment

Membership change: The Senate Floor #1 amendment adds back in the state governor or a member appointed by the governor with the advice and consent of the senate.

Synopsis of SFC Amendment

Membership change: The Senate Finance Committee amendment adds back in the state treasurer or a member appointed by the state treasurer, the commissioner of public lands or a member appointed by the commissioner, one public member appointed by the President Pro Tempore of the Senate, and one public member appointed by the Speaker of the House of Representatives.

Transition Provision: This amendment removes the transition provision in the original bill.

Synopsis of SRC Amendment

Membership change: One public member appointed by the majority floor leader of the senate (instead of the President Pro Tempore of the Senate), one public member appointed by the Majority Floor Leader of the House of Representatives (instead of the Speaker of the House of Representatives).

The state investment officer shall be qualified by at least ten years training and investment experience.

Synopsis of Original Bill

Senate Bill 9 (SB 9) amends Section 6-8-2 NMSA 1978 (being Laws 1957, Chapter 179, Section 2), Section 6-8-3 NMSA 1978 (being Laws 1957, Chapter 179, Section 3), and Section 6-8-7 NMSA 1978 (being Laws 1957, Chapter 179, Section 7).

Membership Change: Senate Bill 9 changes the membership of the State Investment Council (SIC). The bill removes the governor, the State Treasurer, the Commissioner of Public Lands, and the Chief Financial Officer of a state institution of higher education appointed by the governor from the Council. The bill replaces these members with the Secretary of the Department of Finance and Administration (DFA), a member appointed by the State Treasurer, a member appointed by the Commissioner of Public Lands, one public member appointed by the President Pro Tempore of the Senate, one public member appointed by the minority floor leader of the Senate, one public member appointed by the Speaker of the House of Representatives, one public member appointed by the minority floor leader of the House of Representatives, and four members appointed by the governor provided that no more than two members shall be members of the same political party. All members and the state investment officer are appointed with the advice and consent of the Senate. This bill retains the statutory appointment of the Secretary of the DFA, but precludes the secretary from serving as Council Chair or Vice-Chair.

New Chair: The Chair of the Council shall no longer be the governor. The Chair and Vice Chair shall instead be selected by the Council from among the members appointed and serve terms of two years, provided that the Chair and the Vice Chair shall serve staggered terms and shall serve no more than two consecutive terms.

Eligibility Requirement Change: This bill also changes the eligibility requirements for certain members. Except for the Secretary, the members of the Council shall all have at least 10 years experience in the field of investment management, investment accounting, investment risk management or governance in public or private entities, be citizens of the United States, residents of New Mexico and not be eligible for membership on the Council if convicted of a felony or of a misdemeanor involving moral turpitude.

Meeting Frequency & Notice Change: The Council shall meet no fewer than 10 times annually (the Council currently meets at least once a month). Also in this section advance notice of meetings shall be published on the Council's website but no longer be published in a newspaper.

Budget Language: The bill also removes the following language “the council may employ investment management services to invest the funds and may pay reasonable compensation for investment management services from the assets of the applicable funds, subject to budgeting and appropriation by the legislature.”

SBIC Investment: This bill also requires additional reporting to the Council by the Small Business Investment Corporation (SBIC), which is statutorily funded by 1 percent of the Severance Tax Permanent Fund and allows the SIC to invest inactive funds for the SBIC, as it does for 17 other state governmental agencies.

Transition Provision: This bill contains a temporary provision for the transition of membership of the SIC. On July 1, 2013 the governor, State Treasurer, Commissioner of Public Lands and Chief Financial Officer appointed by the governor are no longer members of the SIC. Within 30 days they will appoint new members who shall service on an interim basis until confirmed by the senate.

The effective date of this bill is July 1, 2013.

FISCAL IMPLICATIONS

There is no appropriation made in this bill. There is no impact on revenues. As noted below there may be a small operating budget impact to the SIC due to new members. Some of this budget impact may be alleviated by two less meetings a year as requested in the bill.

According to the SIC, the fiscal impact could amount to several thousand dollars a year due to the potential new public appointees qualifying for per diem and travel reimbursement. The expense would be dependent on whether the new members accepted per diem and other reimbursements (historically, not all Council members have), and the distance they may have to travel for frequent Council and the SIC Committee meetings.

With the HEVC amendment the governor can only appoint 3 members instead of 4. This restores the council back to 11 members. With the Senate floor amendment, the Governor, the State Treasurer, and the Commissioner of Public Lands have been added back as members. Without the Commissioner of Public Lands, the SIC would have no member with direct responsibility for the Land Grant Trust, which could lead to a reduction in revenue for beneficiaries of the land grant trust and a related increased burden on the General Fund.

SIGNIFICANT ISSUES

According to the SIC, this bill incorporates suggestions to improve Council operations originating with the SIC, with other changes being sought by the bill sponsor. The drafts were merged during the interim committee process. The Council as a whole has taken the position that it can and fully supports the additional experience requirements to serve on the SIC, and related clean-up language.

The widespread changes and thoughtful, thorough and engaged approach taken by all Council members since the SIC was reconstituted by statute in 2010 have led to significant improvements in the areas of transparency, governance and above all, investment performance.

The Senate floor and SFC amendments address some of the concerns addressed below by the State Land Office (SLO) and State Treasurer's Office STO, particularly by including the State Treasurer and the Commissioner of Public Lands as members.

The SFC amendment will ensure the State Treasurer will continue to serve on the SIC or be allowed to appoint a member with the advice and consent of the Senate. This will allow the SIC to follow best practices from most states that require that the Treasurer serve on most Financial Boards. The Commissioner of Public Lands will continue to serve on the Board due to his fiduciary responsibility over such funds as the Land Grant Permanent Fund and the Severance Tax Permanent Fund. The amendment will allow the STO to increase the effectiveness and efficiency of the Board and help offset the significant attrition and its impact on continuity within the Board. New members many times lack understanding of state government, state finances, state personnel issues, the Procurement Code, the Audit Code, budgeting, state statutes, state policies and procedures, etc. The constitutional officers work in the aforementioned environment everyday allowing for continuity. It takes a great deal of time and effort to come up to speed in these areas of state government. By the time a member is proficient in knowledge of managing public monies, that person's appointment may be over. The elected officials are charged with the day to day operations of state government and are in the best position to serve as members of the board.

According to SLO's comments on the original bill, by focusing solely on investment management experience by Council members, the legislature would be losing critical governing knowledge, as well as taking away the ability of the voting public to hold these officers accountable. In addition, the Commissioner of Public Lands has a constitutional duty to oversee not only the disposition of the trust lands that feed the Land Grant Permanent Fund, but also how the proceeds from the trust are invested by the SIC on behalf of the LGPF beneficiaries. Without elected officials directly accountable to the public, the SIC transparency would be diminished, especially in the case un-confirmed interim appointments.

At previous Council meetings, and in relating to similar removal bills in previous years, the Governor has indicated she could only support such a measure if all three elected officials were removed, and not a partial slate. The Land Commissioner and Treasurer have also indicated they cannot support a statute calling for their removal, and that by focusing solely on investment management experience by Council members, the legislature would be losing critical governing knowledge, as well as taking away the ability of the voting public to hold these officers accountable. The Land Commissioner has indicated he will personally oppose this legislation, as he says he has a constitutional duty to oversee not only the disposition of the trust lands which feed the Land Grant Permanent Fund, but also how the proceeds from the trust are invested by the SIC on behalf of the LGPF beneficiaries.

PERFORMANCE IMPLICATIONS

According to the Office of the State Auditor (OSA), it appears that the proposed changes in the original bill are meant to position the SIC in a more independent position vis-à-vis potential influence of executive elected officials, and subjects all appointments (with the exception of the Secretary of the DFA, including the state investment officer, to the consent of the state senate.

The SIC notes that SB 9 seeks to require that financial or investment experience be held by all appointees on the Council, including any designees to be named by the Governor, Treasurer and Land Commissioner. While such a requirement would conform with industry best practices requiring minimum qualifications, it would also not be a significant change from the current SIC, where all public members have such experience, and the Treasurer and Land Commissioner both have far greater than the minimum having previously served during different terms for more than

a decade each on the SIC. The primary concern that has been stated on this front is whether elected and other ex-officio members of the Council can fully dedicate the extensive time commitment required for exhaustive investment due diligence participation while still performing their primary elected or appointed duties.

ADMINISTRATIVE IMPLICATIONS

The SIC notes that SB 9 seeks to require that financial or investment experience be held by all appointees on the Council, including those to be named by the Treasurer and Land Commissioner. The primary concern is whether elected and other ex-officio members of the Council can fully dedicate the extensive time commitment required for exhaustive investment due diligence participation while still performing their primary elected or appointed duties.

OTHER SUBSTANTIVE ISSUES

While true that it is hardly typical for a governor to sit on a state investment board or commission, it is not unheard of. Florida's State Board of Administration includes both its Governor and Attorney General as Trustees of its pensions and investment funds. Another example is in Wyoming, where the Governor serves on the Wyoming State Loan and Investment Board.

TECHNICAL ISSUES

As reported by the SIC, this bill also requires the Treasurer and Land Commissioner appointments to serve 5-year terms, which would seem to run in slight misalignment to the 4-year-election cycle associated with those publicly elected offices. It is unclear if that is the intent through design, or to simply be equitable with other SIC public member seat terms. The bill also states that the STO and SLO appointments, like the public members, be 'staggered'. While this is would be ideal in practice to maintain a greater level of consistency of the board as a whole over time, how to stagger those two appointments is not defined in the bills temporary transition provisions.

EWM/svb:blm