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SENATE BILL 41

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

INTRODUCED BY

Carlos R. Cisneros

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."