

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: SB 119

51st Legislature, 1st Session, 2013

Tracking Number: .190831.1

Short Title: Education Trust Act Administration

Sponsor(s): Senator George K. Munoz

Analyst: Travis Dulany

Date: February 12, 2013

FOR THE INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

Bill Summary:

SB 119 amends and recompiles the *Education Trust Act* to eliminate the Education Trust Board (ETB) and change the administration of the act to the State Investment Council (SIC).

Fiscal Impact:

SB 119 makes no appropriation.

Fiscal Issues:

According to the Fiscal Impact Report (FIR) from the Legislative Finance Committee (LFC):

- Based on the ETB's FY 14 budget of \$1.6 million and the SIC's projected operating costs of \$300,000, the projected fiscal impact for FY 14 is \$2.0 million, which would be funded from revenues in the Education Trust Fund.
- The current administrative functions of the ETB in administering the *Education Trust Act* require 1.5 FTE to support the four member board and oversee \$1.4 million in contacts with investment and fund managers and legal counsel. These costs are funded through fees generated from investors in the state's two college savings plans – The Education Plan and Scholar'sEdge.
- The ETB has provided funds to support the Education Pathways Scholarship program administered by the Higher Education Department (HED). For FY 13, this contribution totaled \$500,000 and the LFC and Executive recommendations for FY 14 include a financial aid contribution at this same level. If SB 119 is enacted, the SIC would have the discretion on whether to make the \$500,000 contribution to the state's financial aid program from program fees.
- While both the SIC and ETB report concerns with Oppenheimer Funds¹ continuing to serve as fund manager, the administrative agency charged with overseeing the trust may choose not to terminate Oppenheimer's contract prior to the contract end date in 2015.

¹ Oppenheimer Funds is an investment management service provider that contracts with the ETB.

Substantive Issues:

According to the SIC bill analysis for SB 119:

- the Council:
 - currently has 32 FTEs and would need to dedicate three new employees to administer and oversee the *Education Trust Act*;
 - feels that, with proper resources and personnel, it would be able to take on the responsibility of managing New Mexico's 529 plan, if the Legislature believes it to be appropriate;
 - currently manages funds via investment pools for 17 governmental clients;
 - provides this investment service as a low-cost management option for long-term institutional government clients in the state, but it is not comparable to what individual investors have come to expect from for-profit investment providers offering 401k, individual retirement accounts, deferred compensation, or other investment plans; and
 - would go outside of its current "client services" offerings, thus the need for an additional 3 FTE to oversee the day-to-day operations and investments, which would be deployed through an external investment manager or managers;
- in 2011, Morningstar gave the New Mexico 529 plan an "F" grade and ranked it last among state college savings plans; however, the ETB and Oppenheimer Funds have since worked to expand investment strategies and options to clients and improve operations;
- some of the participants in the New Mexico 529 plan have expressed complaints regarding the plan's fees and long-term investment returns; and
- on that point, the SIC believes it could provide improved performance for both fees and long-term investment returns if it were given additional resources necessary to implement such a plan.

In addressing some of these challenges, according to HED's bill analysis, the ETB:

- has hired an executive director with experience in managing federal college savings plans;
- hired an investment consultant to work with the executive director and program manager, all of whom have drafted an investment plan and implemented a quarterly review to evaluate and monitor fund performance and an annual portfolio review;
- selected legal council to help reorganize the board's litigation position; and
- completed its financial audits for the years between 2008 and 2012.

HED also notes that it has implemented its \$67.3 million settlement agreement with Oppenheimer Funds regarding investments in the Oppenheimer Core Bond Fund during 2008 and 2009. As a result, according to HED, over 90,000 account holders received settlement payments for their losses in the Core Bond Fund.

The FIR notes that one lawsuit remains, *Ping Lu, et al v. ETB*. The SIC states that it "could not allow itself to inherit any such liabilities associated with such litigation, which would endanger, at a minimum, SIC resources and budget, or potentially even the permanent funds."

Background:

Similar legislation was introduced during the 2012 regular legislative session; however, action on that bill was postponed.

According to HED, the ETB:

- was created in 1997 pursuant to the *Education Trust Act*;
- administers the Education Trust Fund, which includes all funds received pursuant to college investment agreement as part of the state's qualified tuition program, as authorized by 26 USC § 529;
- is governed by a four-person board that includes the secretary of HED, and members are appointed by:
 - the Governor;
 - the Speaker of the House; and
 - the President Pro Tempore of the Senate.

Committee Referrals:

SEC/SFC

Related Bills:

SB 332 *Education Trust Board Membership*