



The Legislature
of the
State of New Mexico

49th Legislature, Second Session

LAWS 2010

CHAPTER 14

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE RULES COMMITTEE SUBSTITUTE FOR
SENATE BILLS 18, 218 & 238, as amended,
with emergency clause

Introduced by

EMERGENCY CLAUSE



CHAPTER 14

AN ACT

1
2 RELATING TO STATE INVESTMENTS; CHANGING THE COMPOSITION OF
3 THE STATE INVESTMENT COUNCIL; AMENDING POWERS AND DUTIES OF
4 THE STATE INVESTMENT OFFICER AND THE STATE INVESTMENT
5 COUNCIL; PROVIDING FOR THE STATE INVESTMENT COUNCIL TO
6 APPOINT THE STATE INVESTMENT OFFICER AND TO APPOINT MEMBERS
7 TO THE PRIVATE EQUITY INVESTMENT ADVISORY COMMITTEE; CHANGING
8 THE METHOD OF APPOINTMENT OF PUBLIC MEMBERS OF THE STATE
9 INVESTMENT COUNCIL; RECONCILING MULTIPLE AMENDMENTS TO THE
10 SAME SECTION OF LAW IN LAWS 2005; DECLARING AN EMERGENCY.

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

15 "6-8-2. STATE INVESTMENT COUNCIL.--

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

17 The council shall be composed of:

18 (1) the governor;

19 (2) the state treasurer;

20 (3) the commissioner of public lands;

21 (4) the secretary;

22 (5) the chief financial officer of a state

23 institution of higher education appointed by the governor

24 with the advice and consent of the senate;

25 (6) four members appointed by the New Mexico

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

4 (7) two members appointed by the governor
5 with the advice and consent of the senate.

6 B. The chair of the council shall be the governor,
7 and the vice chair shall be selected by the council. All
8 actions of the council shall be by majority vote, and a
9 majority of the members shall constitute a quorum.

10 C. Members of the council appointed pursuant to
11 Paragraphs (6) and (7) of Subsection A of this section shall
12 be reimbursed per diem and mileage pursuant to the provisions
13 of the Per Diem and Mileage Act."

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

16 "6-8-3. COUNCIL TERMS AND QUALIFICATIONS.--

17 A. Members of the council appointed pursuant to
18 Paragraphs (6) and (7) of Subsection A of Section 6-8-2 NMSA
19 1978, with the advice and consent of the senate, shall serve
20 for staggered terms of five years. Members of the council
21 shall serve until their successors are appointed and have
22 qualified.

23 B. The members of the council appointed pursuant
24 to Paragraphs (6) and (7) of Subsection A of Section 6-8-2
25 NMSA 1978 shall be qualified by competence and no less than

1 ten years experience in the field of investment or finance.
2 A member of the council shall not have had any contracts to
3 do business with the state investment council, the investment
4 office, the office of the state treasurer, the educational
5 retirement board, the public employees retirement
6 association, the New Mexico finance authority or the state
7 board of finance for a period of two calendar years prior to
8 the person's appointment to the council and shall not enter
9 into any contracts to do business with any of the named state
10 agencies or instrumentalities for a period of two calendar
11 years after the end of the term for which the member was
12 appointed. Members of the council and officers and employees
13 of the council shall be governed by the provisions of the
14 Governmental Conduct Act. Nothing in this section or in the
15 Governmental Conduct Act shall be construed as prohibiting an
16 officer of a financial institution from participating as a
17 member of the council in setting general policies of the
18 council, nor shall any provision of the Governmental Conduct
19 Act prohibit the council or the state treasurer from
20 depositing funds under the jurisdiction of the council in any
21 financial institution. A council member shall not hold an
22 office or employment in a political party.

23 C. The member appointed pursuant to Paragraph (5)
24 of Subsection A of Section 6-8-2 NMSA 1978 shall serve at the
25 pleasure of the governor. A member of the council appointed

1 pursuant to Paragraphs (6) and (7) of Subsection A of Section
2 6-8-2 NMSA 1978 may be removed from the council by the
3 appointing person or entity, for failure to attend three
4 consecutive meetings or other cause, in the manner provided
5 for removal of members of boards of regents under Article 12,
6 Section 13 of the constitution of New Mexico. A vacancy in
7 the membership of the council occurring other than by
8 expiration of term shall be filled in the same manner as the
9 original appointment but for the unexpired term only."

10 Section 3. Section 6-8-4 NMSA 1978 (being Laws 1957,
11 Chapter 179, Section 4, as amended) is amended to read:

12 "6-8-4. INVESTMENT OFFICE--STATE INVESTMENT OFFICER--
13 TERMS.--

14 A. There is established an "investment office".
15 The chief administrative officer of the office shall be known
16 as the "state investment officer".

17 B. The state investment officer shall be appointed
18 by the council. The state investment officer shall devote
19 the officer's entire time and attention to the duties of that
20 office and shall not engage in any other occupation or
21 profession or hold any other public office, appointive or
22 elective. The officer shall be a person qualified, by
23 training and investment experience, to direct the work of the
24 investment office and shall have had at least five years'
25 professional experience as an investment officer. The

1 officer shall receive a salary to be determined by the state
2 investment council but in no case less than fifty thousand
3 dollars (\$50,000) annually.

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

8 Section 4. Section 6-8-7 NMSA 1978 (being Laws 1957,
9 Chapter 179, Section 7, as amended by Laws 2005, Chapter 194,
10 Section 1 and by Laws 2005, Chapter 240, Section 1) is
11 amended to read:

12 "6-8-7. POWERS AND DUTIES OF THE STATE INVESTMENT
13 COUNCIL AND STATE INVESTMENT OFFICER--INVESTMENT POLICY--
14 INVESTMENT MANAGERS.--

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

25 B. The state investment officer shall formulate

1 and recommend to the council for approval investment
2 regulations or resolutions pertaining to the kind or nature
3 of investments and limitations, conditions and restrictions
4 upon the methods, practices or procedures for investment,
5 reinvestment, purchase, sale or exchange transactions that
6 should govern the activities of the investment office.

7 C. The council shall meet at least once each
8 month, and as often as exigencies may demand, to consult with
9 the state investment officer concerning the work of the
10 investment office. The council shall have access to all
11 files and records of the investment office and shall require
12 the state investment officer to report on and provide
13 information necessary to the performance of council
14 functions. The council may hire one or more investment
15 management firms to advise the council with respect to the
16 council's overall investment plan for the investment of all
17 funds managed by the investment office and pay reasonable
18 compensation for such advisory services from the assets of
19 the applicable funds, subject to budgeting and appropriation
20 by the legislature. The terms of any such investment
21 management services contract shall incorporate the statutory
22 requirements for investment of funds under the council's
23 jurisdiction.

24 D. The council shall provide an opportunity for
25 public comment at meetings of the council. Advance notice of

1 meetings shall be published on the council's web site and in
2 a newspaper of general circulation at least ten days in
3 advance of the meeting.

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

11 F. The council, the state investment officer, any
12 person providing investment advice to the council or state
13 investment officer for a fee or other compensation and all
14 persons exercising discretionary authority or control of
15 funds under the management of the council are fiduciaries.

16 G. The council may select and contract for the
17 services of one or more custodian banks for all funds under
18 the council's management. For the purpose of this
19 subsection, "custodian bank" means a financial institution
20 with the general fiduciary duties to manage, control and
21 collect the assets of an investment fund, including receiving
22 all deposits and paying all disbursements as directed by
23 staff, safekeeping of assets, coordination of asset
24 transfers, timely settlement of securities transactions and
25 accurate and timely reporting of the assets by individual

1 account and in total.

2 H. For funds available for investment for more
3 than one year, the council may contract with any state agency
4 to provide investment advisory or investment management
5 services, separately or through a pooled investment fund,
6 provided the state agency enters into a joint powers
7 agreement with the council and that state agency pays at
8 least the direct cost of such services. Notwithstanding any
9 statutory provision governing state agency investments, the
10 council may invest funds available from a state agency
11 pursuant to a joint powers agreement in any type of
12 investment permitted for the land grant permanent funds under
13 the prudent investor rule. In performing investment services
14 for a state agency, the council and the state investment
15 officer are exempt from the New Mexico Uniform Securities
16 Act. As used in this subsection, "state agency" means any
17 branch, agency, department, board, instrumentality,
18 institution or political subdivision of the state, the New
19 Mexico finance authority, the New Mexico mortgage finance
20 authority and any tax-exempt private endowment entity whose
21 sole beneficiary is a state agency.

22 I. The state investment officer shall provide
23 quarterly performance reports to the legislative finance
24 committee. Annually, the state investment officer shall
25 ratify and provide written investment policies, including any

1 amendments, to the legislative finance committee."

2 Section 5. Section 6-8-14 NMSA 1978 (being Laws 1957,
3 Chapter 179, Section 14, as amended) is amended to read:

4 "6-8-14. MONTHLY REPORTS.--No later than ten days after
5 the close of each month, the state investment officer shall
6 submit to the secretary and the state investment council a
7 report of the operations of the office during the past month.
8 Each report shall give a complete statement of the state
9 investment portfolio as of the time of the report and in
10 addition, shall include a detailed summary of the month's
11 investment, reinvestment, purchase, sale and exchange
12 transactions, setting forth the investments bought, sold or
13 exchanged, the dates thereof, the prices paid or obtained,
14 the names of the dealers involved, fees paid for each
15 transaction, disclosure of contractor arrangements and a
16 statement of the funds or accounts referred to herein. The
17 reports shall also be circulated to a mailing list of
18 investment bankers and brokers recommended by the council.
19 The reports shall be published on the web sites of the
20 council, the legislature and the department of finance and
21 administration and shall be open for inspection to the public
22 and the press in the office of the state investment officer."

23 Section 6. Section 6-8-20 NMSA 1978 (being Laws 1987,
24 Chapter 219, Section 3, as amended) is amended to read:

25 "6-8-20. PRIVATE EQUITY INVESTMENT ADVISORY COMMITTEE

1 CREATED--MEMBERSHIP--DUTIES--TERMS--LIABILITIES--CONFLICT OF
2 INTEREST.--

3 A. There is created the "private equity investment
4 advisory committee" to the council. The committee consists
5 of the state investment officer, a member of the council
6 appointed by the council and three members who are qualified
7 by competence and experience in finance and investment and
8 knowledgeable about the private equity investment process and
9 who are appointed by the council.

10 B. Members appointed by the council, except the
11 council member, shall be appointed for three-year terms;
12 provided that the terms of the initial committee members
13 shall be staggered so that the term of one member expires
14 each year. After the initial appointments, all appointed
15 members shall be appointed for three-year terms. Members
16 shall serve until their successors are appointed. A vacancy
17 occurring other than by expiration of term shall be filled in
18 the same manner as the original appointment, but only for the
19 unexpired term.

20 C. The committee shall review and make
21 recommendations to the council on investments authorized
22 pursuant to Sections 7-27-5.15 and 7-27-5.26 NMSA 1978 and
23 all other private equity investments and shall advise the
24 council in matters and policies related to such investments.
25 The committee shall establish policies for national private

1 equity fund investments, New Mexico private equity fund
2 investments and New Mexico film private equity fund
3 investments not less often than annually and shall make
4 copies available to interested parties.

5 D. Members of the committee shall receive per diem
6 and mileage as provided for nonsalaried public officers in
7 the Per Diem and Mileage Act and shall receive no other
8 compensation, perquisite or allowance.

9 E. The committee shall elect annually a chair from
10 among its members and may elect other officers as necessary.
11 The committee shall meet upon the call of the chair or the
12 state investment officer.

13 F. Members of the committee are public employees
14 within the meaning of the Tort Claims Act and are entitled to
15 all immunity and indemnification provided under that act.

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

20 H. The state investment officer may enter into
21 contracts with investment advisors for private equity fund
22 investments and film fund investments authorized pursuant to
23 Sections 7-27-5.15 and 7-27-5.26 NMSA 1978 and all other
24 private equity investments and may pay budgeted expenses for
25 the advisors from the assets of any fund administered under

1 the supervision of the council, as applicable.

2 I. As used in this section, "private equity
3 investments" means any legal entity that has as its primary
4 business activity the investment of funds in return for
5 equity in or debt of businesses for the purpose of providing
6 capital for startup, expansion, new product development,
7 recapitalization or a similar business purpose."

8 Section 7. Section 6-10-35 NMSA 1978 (being Laws 1934
9 (S.S.), Chapter 24, Section 3, as amended by Laws 1987,
10 Chapter 79, Section 14 and by Laws 1987, Chapter 87,
11 Section 1) is amended to read:

12 "6-10-35. FISCAL AGENT OF NEW MEXICO--STATE CHECKING
13 DEPOSITORIES--STATE DEPOSITORIES--DESIGNATION BY BOARD OF
14 FINANCE.--

15 A. Except as otherwise provided by law, the state
16 board of finance may designate a bank or savings and loan
17 association doing business in this state and having an
18 unimpaired capital and surplus of at least one hundred fifty
19 thousand dollars (\$150,000) as the "fiscal agent of New
20 Mexico". The designation is subject to change, from time to
21 time, by the state board of finance; however, the board shall
22 formulate and adopt designation procedures, filed in
23 accordance with the State Rules Act, that shall be adhered to
24 on each occasion of designation. The board, after it has
25 designated the fiscal agent, shall apprise the legislature of

1 its action and, in addition to the name of the designated
2 fiscal agent, the communication shall include a brief
3 description of the designee's particular qualifications.

4 B. The bank or savings and loan association
5 designated as the fiscal agent of New Mexico shall enter into
6 an agreement with the state, acting through the state board
7 of finance, for:

8 (1) the collection for the state of all
9 checks and other items received by the state on any account;

10 (2) the handling of the checking account of
11 the state treasurer;

12 (3) the handling of all transfers of money
13 in connection with the sale or retirement of bonds or
14 obligations of the state or the purchase by the state of
15 bonds or other securities;

16 (4) the investment of permanent or other
17 funds of the state;

18 (5) the safekeeping of bonds or other
19 securities belonging to or held by the state or any official
20 of the state;

21 (6) the rate of interest to be paid upon
22 average daily balances of state funds; and

23 (7) acting as the agent of the state in
24 fiscal matters generally, subject always to the supervision
25 and approval of the state board of finance.

1 C. The agreement shall contain the terms and
2 conditions that are necessary, in the judgment of the state
3 board of finance, for the proper conduct of the fiscal
4 affairs of the state and the safekeeping of the money of the
5 state.

6 D. The state board of finance shall require the
7 fiscal agent of New Mexico to furnish surety company bond or
8 securities of the kinds specified by law for the security of
9 deposits of public money in an amount not less than two
10 million five hundred thousand dollars (\$2,500,000) as
11 security for the safekeeping of the money of the state and
12 the faithful performance of its duties as the fiscal agent.
13 The state board of finance may adjust the amount of bond or
14 security from time to time, but in no event shall the bond or
15 security be in an amount less than two million five hundred
16 thousand dollars (\$2,500,000). No other bond or security is
17 required of the fiscal agent for the securing of funds
18 deposited by the state treasurer in the fiscal agency
19 account, and the state treasurer is not liable upon the state
20 treasurer's official bond on account of funds deposited in
21 the fiscal agency account when the account is so secured.
22 Nothing in this section shall prevent the bank or savings and
23 loan association designated as fiscal agent from also
24 qualifying as a state depository pursuant to Chapter 6,
25 Article 10 NMSA 1978.

1 E. Payment to the fiscal agent of New Mexico for
2 services performed may be made by the state board of finance
3 upon warrants drawn by the secretary upon the state treasury
4 as provided by law for expenditure of state funds or by
5 compensating balances or a combination thereof. The
6 legislature shall appropriate funds to the state board of
7 finance for this purpose annually.

8 F. The state board of finance may also designate,
9 according to its adopted designation procedures, not more
10 than two other banks or savings and loan associations doing
11 business in this state as "state checking depositories" in
12 which money necessary to meet the current obligations of the
13 state may be deposited in temporary checking accounts. No
14 bank or savings and loan association shall be so designated
15 unless it has an unimpaired capital and surplus of at least
16 one hundred fifty thousand dollars (\$150,000). Not more than
17 twenty percent of all the state's money on hand shall be on
18 deposit in all such checking accounts, including the checking
19 account with the fiscal agent of New Mexico, for any period
20 of time longer than is required to distribute the amount
21 above twenty percent to applying, qualified depository banks
22 or savings and loan associations. The state board of finance
23 shall require a designated state checking depository to
24 furnish surety company bond or securities of the kinds
25 specified by law for the security of deposits of public money

1 in an amount established by the board. Nothing in this
2 section shall prevent a bank or savings and loan association
3 designated as a state checking depository from also
4 qualifying as a state depository pursuant to Chapter 6,
5 Article 10 NMSA 1978, and nothing in this section shall
6 prohibit the state treasurer from transferring to
7 out-of-state banks and keeping on deposit with them funds
8 necessary to pay interest upon and principal of those
9 outstanding bonds, debentures and certificates of
10 indebtedness that, with the interest coupons, were made
11 payable at an out-of-state bank.

12 G. An authorized bank, savings and loan
13 association or credit union desiring to receive public money
14 deposits may file with the board of finance having control of
15 the money its written proposal to receive the money on
16 deposit, together with its agreement to pay interest on daily
17 balances of the deposits at the rate of interest fixed by the
18 state board of finance as prescribed in Section 6-10-30 NMSA
19 1978. The proposal shall specify whether the deposit is
20 desired as a time deposit. The board of finance shall, at
21 its next meeting after receipt of the proposal, consider the
22 proposal, and, if it is in accordance with Chapter 6, Article
23 10 NMSA 1978, the board shall thereupon notify the bank or
24 savings and loan association that upon its furnishing
25 security as provided, it will be designated as a "state

1 depository" of public money in an amount to be fixed by the
2 board, which amount shall not exceed seventy-five percent of
3 the capital and surplus of the applicant bank or savings and
4 loan association if the deposit is secured by surety bond.
5 If, after considering the proposal of a credit union and
6 finding it in accordance with Section 6-10-36 NMSA 1978, the
7 board of finance may designate the credit union a "state
8 depository" of public money in an amount to be fixed by the
9 board, which shall not exceed that amount insured by an
10 agency of the United States. Upon furnishing proper bond or
11 other security authorized by Chapter 6, Article 10 NMSA 1978,
12 a certificate shall be issued to the bank or savings and loan
13 association by the board of finance qualifying it as a
14 depository of public money; and, if designated, a certificate
15 shall be issued to a credit union qualifying it as a
16 depository of public money; provided that a bank located
17 outside the state, acting solely in the capacity of a paying
18 bank for the purpose of paying interest upon and principal of
19 state obligations represented by bonds, debentures and
20 certificates of indebtedness and attached interest coupons,
21 is not required to furnish collateral security in excess of
22 one hundred thousand dollars (\$100,000) regardless of the
23 amount of state public money on deposit."

24 Section 8. TEMPORARY PROVISIONS--TRANSITION MEMBERSHIP
25 OF STATE INVESTMENT COUNCIL.--

1 A. On the effective date of this act, the state
2 investment officer is no longer a member of the state
3 investment council.

4 B. On the effective date of this act, the three
5 public members serving on the state investment council the day
6 before the effective date of this act are no longer members of
7 the state investment council.

8 C. Within thirty days of the effective day of the
9 act, four members shall be appointed to the state investment
10 council by the New Mexico legislative council pursuant to
11 Paragraph (6) of Subsection A of Section 6-8-2 NMSA 1978 and
12 shall serve on an interim basis until confirmed by the senate.

13 D. Within thirty days of the effective date of
14 this act, two members shall be appointed to the state
15 investment council by the governor pursuant to Paragraph (7)
16 of Subsection A of Section 6-8-2 NMSA 1978 and shall serve on
17 an interim basis until confirmed by the senate.

18 E. The four members appointed pursuant to
19 Subsection C of this section and the two members appointed
20 pursuant to Subsection D of this section shall, by lot,
21 determine the initial terms of office for each position so
22 that one position will be for a term of one year, one position
23 will be for a term of two years, two positions will be for
24 terms of three years, one position will be for a term of four
25 years and one position will be for a term of five years.

1 Thereafter, the terms shall be for five years.

2 Section 9. EMERGENCY.--It is necessary for the public
3 peace, health and safety that this act take effect
4 immediately. _____

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Diane D. Denish

Diane D. Denish, President
Senate

Lenore M. Naranjo
Lenore M. Naranjo, Chief Clerk
Senate

Ben Lujan

Ben Lujan, Speaker
House of Representatives

Stephen R. Arias
Stephen R. Arias, Chief Clerk
House of Representatives

Approved by me this 1st day of March, 2010

Bill Richardson

Governor Bill Richardson
State of New Mexico

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