



The Legislature  
of the  
State of New Mexico

50th Legislature, 1st Session

LAWS 2011

CHAPTER 51

SENATE BILL 82, as amended

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Introduced by  
SENATOR JOHN M. SAPIEN



ENDORSED BY THE INVESTMENTS OVERSIGHT COMMITTEE

# CHAPTER 51

AN ACT

1  
2 RELATING TO THE STATE INVESTMENT OFFICER; REMOVING THE STATE  
3 INVESTMENT OFFICER FROM MEMBERSHIP ON BOARDS OF THE NEW  
4 MEXICO FINANCE AUTHORITY, THE SMALL BUSINESS INVESTMENT  
5 CORPORATION AND THE NEW MEXICO RENEWABLE ENERGY TRANSMISSION  
6 AUTHORITY AND FROM THE EDUCATION TRUST BOARD.

7  
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

9 SECTION 1. Section 6-21-4 NMSA 1978 (being Laws 1992,  
10 Chapter 61, Section 4, as amended) is amended to read:

11 "6-21-4. NEW MEXICO FINANCE AUTHORITY CREATED--  
12 MEMBERSHIP--QUALIFICATIONS--QUORUM--MEETINGS--COMPENSATION--  
13 BOND.--

14 A. There is created a public body politic and  
15 corporate, separate and apart from the state, constituting a  
16 governmental instrumentality to be known as the "New Mexico  
17 finance authority" for the performance of essential public  
18 functions.

19 B. The authority shall be composed of eleven  
20 members. The secretary of finance and administration, the  
21 secretary of economic development, the secretary of energy,  
22 minerals and natural resources, the secretary of environment,  
23 the executive director of the New Mexico municipal league and  
24 the executive director of the New Mexico association of  
25 counties or their designees shall be ex-officio members of

1 the authority with voting privileges. The governor, with the  
2 advice and consent of the senate, shall appoint to the  
3 authority the chief financial officer of a state higher  
4 educational institution and four members who are residents of  
5 the state. The appointed members shall serve at the pleasure  
6 of the governor.

7 C. The appointed members of the authority shall be  
8 appointed to four-year terms. The initial members shall be  
9 appointed to staggered terms of four years or less, so that  
10 the term of at least one member expires on January 1 of each  
11 year. Vacancies shall be filled by appointment by the  
12 governor for the remainder of the unexpired term. Any member  
13 of the authority shall be eligible for reappointment.

14 D. Each appointed member before entering upon the  
15 member's duty shall take an oath of office to administer the  
16 duties of the member's office faithfully and impartially. A  
17 record of the oath shall be filed in the office of the  
18 secretary of state.

19 E. The governor shall designate an appointed  
20 member of the authority to serve as chair. The authority  
21 shall elect annually one of its members to serve as vice  
22 chair. The authority shall appoint and prescribe the duties  
23 of such other officers, who need not be members, as the  
24 authority deems necessary or advisable, including chief  
25 executive officer and a secretary, who may be the same

1 person. The authority may delegate to one or more of its  
2 members, officers, employees or agents such powers and duties  
3 as it may deem proper and consistent with the New Mexico  
4 Finance Authority Act.

5 F. The chief executive officer of the authority  
6 shall direct the affairs and business of the authority,  
7 subject to the policies, control and direction of the  
8 authority. The secretary of the authority shall keep a  
9 record of the proceedings of the authority and shall be  
10 custodian of all books, documents and papers filed with the  
11 authority, the minute book or journal of the authority and  
12 its official seal. The secretary shall make copies of all  
13 minutes and other records and documents of the authority and  
14 give certificates under the official seal of the authority to  
15 the effect that the copies are true copies, and all persons  
16 dealing with the authority may rely upon the certificates.

17 G. Meetings of the authority shall be held at the  
18 call of the chair or whenever three members shall so request  
19 in writing. A majority of members then serving constitutes a  
20 quorum for the transaction of any business. The affirmative  
21 vote of at least a majority of a quorum present shall be  
22 necessary for any action to be taken by the authority. An  
23 ex-officio member may designate in writing another person to  
24 attend meetings of the authority and to the same extent and  
25 with the same effect act in the ex-officio member's stead.

1 No vacancy in the membership of the authority shall impair  
2 the right of a quorum to exercise all rights and perform all  
3 duties of the authority.

4 H. Each member of the authority shall give bond as  
5 provided in the Surety Bond Act. All costs of the surety  
6 bonds shall be borne by the authority.

7 I. The authority is not created or organized, and  
8 its operations shall not be conducted, for the purpose of  
9 making a profit. No part of the revenues or assets of the  
10 authority shall benefit or be distributable to its members,  
11 officers or other private persons. The members of the  
12 authority shall receive no compensation for their services,  
13 but shall be reimbursed for actual and necessary expenses at  
14 the same rate and on the same basis as provided for public  
15 officers in the Per Diem and Mileage Act.

16 J. The authority shall not be subject to the  
17 supervision or control of any other board, bureau, department  
18 or agency of the state except as specifically provided in the  
19 New Mexico Finance Authority Act. No use of the terms "state  
20 agency" or "instrumentality" in any other law of the state  
21 shall be deemed to refer to the authority unless the  
22 authority is specifically referred to in the law.

23 K. The authority is a governmental instrumentality  
24 for purposes of the Tort Claims Act."

25 SECTION 2. Section 21-21K-4 NMSA 1978 (being Laws 1997,

1 Chapter 259, Section 4) is amended to read:

2 "21-21K-4. BOARD CREATED--MEMBERS--APPOINTMENT--TERMS  
3 OF OFFICE--POWERS AND DUTIES.--

4 A. There is created the "education trust board".  
5 The board is administratively attached to the higher  
6 education department, and the department shall provide  
7 administrative support for the board in carrying out its  
8 duties pursuant to the Education Trust Act. The board shall  
9 consist of the following voting members:

10 (1) the secretary of higher education or the  
11 secretary's designee, who shall be the ex-officio chair of  
12 the board;

13 (2) one member appointed by the governor;

14 (3) one member representing institutions of  
15 higher education, appointed by the speaker of the house of  
16 representatives; and

17 (4) one member representing students at  
18 institutions of higher education, appointed by the president  
19 pro tempore of the senate.

20 B. The appointed members must possess knowledge,  
21 skill and experience in higher education, business or  
22 finance.

23 C. The appointed members shall serve six-year  
24 terms, with the exception of the member representing  
25 students, who shall be appointed for a two-year term.

1 Vacancies on the board shall be filled by the respective  
2 appointing authority for the remainder of the vacating  
3 member's term.

4 D. Members of the board shall be subject to the  
5 provisions of the Per Diem and Mileage Act and shall receive  
6 no other compensation, perquisite or allowance for their  
7 service on the board.

8 E. The board is authorized to adopt and promulgate  
9 rules and regulations as necessary to carry out the  
10 provisions of the Education Trust Act, protect the financial  
11 integrity of the fund, preserve the program's benefits and  
12 ensure the appropriate use of the tax benefits. The board  
13 shall also determine and adopt by regulation the cost of  
14 attendance at institutions of higher education; provided that  
15 the cost of attendance shall include the same components and  
16 allowances as are used to determine cost of attendance for  
17 the federal student financial assistance programs."

18 SECTION 3. Section 58-29-5 NMSA 1978 (being Laws 2000,  
19 Chapter 97, Section 7, as amended) is amended to read:

20 "58-29-5. CORPORATION BOARD OF DIRECTORS--APPOINTMENT--  
21 POWERS.--

22 A. The corporation shall be governed by the board.  
23 The corporation's board of directors shall consist of:

24 (1) the state treasurer or the state  
25 treasurer's designee; and

1 (2) six members appointed by the governor.

2 B. Each director shall hold office for the length  
3 of the director's term in office or until a successor is  
4 appointed or elected and begins service on the board.

5 C. The governor shall appoint, with the consent of  
6 the senate, the six public directors of the board who shall  
7 serve at the pleasure of the governor.

8 D. The governor's appointees to the board shall be  
9 public members who have general expertise in small business  
10 management, but they shall not be employed by or represent  
11 small businesses receiving equity investments from the  
12 corporation.

13 E. No two members of the board shall be employed  
14 by or represent the same company or institution.

15 F. The board shall annually elect a chair from  
16 among its members and shall elect those other officers it  
17 determines necessary for the performance of its duties.

18 G. The power to set the policies and procedures  
19 for the corporation is vested in the board. The board may  
20 perform all acts necessary or appropriate to exercise that  
21 power.

22 H. Public members of the board shall be reimbursed  
23 for attending meetings of the board as provided in the Per  
24 Diem and Mileage Act and shall receive no other compensation,  
25 perquisite or allowance.



1 I. Public members of the board are appointed  
2 public officials of the state while carrying out their duties  
3 and activities under the Small Business Investment Act. The  
4 directors and the employees of the corporation are not liable  
5 personally, either jointly or severally, for any debt or  
6 obligation created or incurred by the corporation or for any  
7 act performed or obligation entered into in an official  
8 capacity when done in good faith, without intent to defraud  
9 and in connection with the administration, management or  
10 conduct of the corporation or affairs relating to it.

11 J. The board shall conduct an annual audit of the  
12 books of accounts, funds and securities of the corporation to  
13 be made by a competent and independent firm of certified  
14 public accountants. A copy of the audit report shall be  
15 filed with the president. The audit shall be open to the  
16 public for inspection."

17 SECTION 4. Section 62-16A-3 NMSA 1978 (being Laws 2007,  
18 Chapter 3, Section 3) is amended to read:

19 "62-16A-3. NEW MEXICO RENEWABLE ENERGY TRANSMISSION  
20 AUTHORITY CREATED--ORGANIZATION.--

21 A. The "New Mexico renewable energy transmission  
22 authority" is created as a public body, politic and  
23 corporate, separate and apart from the state, constituting a  
24 governmental instrumentality for the performance of essential  
25 public functions.

1           B. The authority shall be composed of six members  
2 as follows:

3                   (1) three members appointed by the governor  
4 with the advice and consent of the senate. The initial  
5 appointees shall be appointed for staggered terms of one, two  
6 and three years; thereafter, the members shall be appointed  
7 for three-year terms;

8                   (2) the state treasurer or the state  
9 treasurer's designee;

10                   (3) one member appointed by the speaker of  
11 the house of representatives who shall serve at the pleasure  
12 of the speaker of the house; and

13                   (4) one member appointed by the president  
14 pro tempore of the senate who shall serve at the pleasure of  
15 the president pro tempore.

16           C. The qualifications of the members shall be as  
17 follows:

18                   (1) one member appointed by the governor  
19 shall have expertise in financial matters involving the  
20 financing of major electrical transmission projects;

21                   (2) the other four appointed members shall  
22 have:

23                           (a) special knowledge of the public  
24 utility industry, as evidenced by college degrees or by  
25 experience, at least five years of which must be with the

1 public utility industry; and

2 (b) knowledge of renewable energy  
3 development; and

4 (3) no member shall represent a person that  
5 owns or operates facilities.

6 D. The members initially appointed by the speaker  
7 of the house and the president pro tempore of the senate  
8 shall, by lot, determine one to have an initial term of two  
9 years and one to have an initial term of four years;  
10 thereafter, the appointments will be for staggered terms of  
11 four years.

12 E. In addition to the six voting members, the  
13 secretary of energy, minerals and natural resources shall  
14 serve as an ex-officio nonvoting member of the authority.

15 F. The governor shall designate an appointed  
16 member of the authority to serve as chair, and the authority  
17 may elect annually such other officers as it deems necessary.

18 G. The authority shall meet at the call of the  
19 chair or whenever four members shall so request in writing.  
20 A majority of members then serving constitutes a quorum for  
21 the transaction of business, but the affirmative vote of at  
22 least four members is necessary for any action to be taken by  
23 the authority.

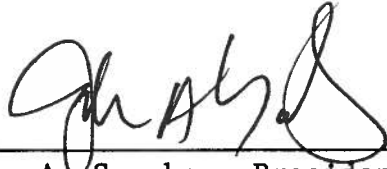
24 H. The authority is not created or organized, and  
25 its operations are not conducted, for the purpose of making a

1 profit, but it is expected to recover the costs of operating  
2 the authority. No part of the revenues or assets of the  
3 authority shall benefit or be distributable to its members,  
4 officers or other private persons. The members of the  
5 authority shall receive no compensation for their services,  
6 but the public members shall be reimbursed for actual and  
7 necessary expenses at the same rate and on the same basis as  
8 provided for public officers in the Per Diem and Mileage Act.

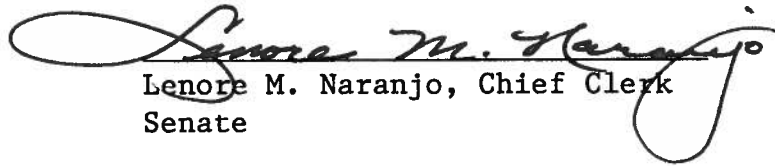
9 I. The authority is not subject to the supervision  
10 or control of any other board, bureau, department or agency  
11 of the state except as specifically provided in the New  
12 Mexico Renewable Energy Transmission Authority Act. No use  
13 of the terms "state agency" or "instrumentality" in any other  
14 law of the state shall be deemed to refer to the authority  
15 unless the authority is specifically referred to in the law.

16 J. The authority is a governmental instrumentality  
17 for purposes of the Tort Claims Act."

18 SECTION 5. EFFECTIVE DATE.--The effective date of the  
19 provisions of this act is July 1, 2011. \_\_\_\_\_



John A. Sanchez, President  
Senate



Lenore M. Naranjo, Chief Clerk  
Senate



Ben Lujan, Speaker  
House of Representatives



Stephen R. Arias, Chief Clerk  
House of Representatives

Approved by me this 4<sup>th</sup> day of April, 2011



Governor Susana Martinez  
State of New Mexico

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