



The Legislature
of the
State of New Mexico

51st Legislature, 1st Session

LAWS 2013

CHAPTER _____

SENATE BILL 9, as amended

POCKET VETOED
Introduced by

SENATOR STEVEN P. NEVILLE AND SENATOR TIMOTHY M. KELLER



FOR THE INVESTMENTS AND PENSIONS
OVERSIGHT COMMITTEE

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AN ACT

RELATING TO PUBLIC FINANCES; CHANGING THE MEMBERSHIP, POWERS
AND DUTIES OF THE STATE INVESTMENT COUNCIL; PROVIDING
ELIGIBILITY REQUIREMENTS FOR CERTAIN MEMBERS; CHANGING
MEETING FREQUENCY AND NOTICE REQUIREMENTS; PROVIDING FOR THE
ELECTION OF THE CHAIR AND VICE CHAIR OF THE COUNCIL;
EXTENDING REPORTING DEADLINES; AUTHORIZING THE COUNCIL TO
INVEST FUNDS FOR THE SMALL BUSINESS INVESTMENT CORPORATION.

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

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

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

A. There is created a "state investment council".
The council shall be composed of:

- (1) the governor or a member appointed by
the governor with the advice and consent of the senate;
- (2) the state treasurer or a member
appointed by the state treasurer with the advice and consent
of the senate;
- (3) the commissioner of public lands or a
member appointed by the commissioner of public lands with the
advice and consent of the senate;
- (4) the secretary;
- (5) the chief financial officer of a state

1 institution of higher education appointed by the governor
2 with the advice and consent of the senate;

3 (6) four members appointed by the New Mexico
4 legislative council with the advice and consent of the
5 senate; provided that no more than two members shall be
6 members of the same political party;

7 (7) one public member appointed by the
8 president pro tempore of the senate with the advice and
9 consent of the senate;

10 (8) one public member appointed by the
11 minority floor leader of the senate with the advice and
12 consent of the senate;

13 (9) one public member appointed by the
14 speaker of the house of representatives with the advice and
15 consent of the senate;

16 (10) one public member appointed by the
17 minority floor leader of the house of representatives with
18 the advice and consent of the senate; and

19 (11) three members appointed by the governor
20 with the advice and consent of the senate; provided that no
21 more than two members shall be members of the same political
22 party.

23 B. The chair and the vice chair of the council
24 shall be selected by the council from among the members
25 appointed pursuant to Subsection A of this section for terms

1 of two years; provided that the chair and the vice chair
2 shall serve staggered terms and shall serve no more than two
3 consecutive terms and the vice chair elected in 2012 shall
4 serve a one-year term to allow for staggered terms.

5 C. All actions of the council shall be by majority
6 vote, and a majority of the members shall constitute a
7 quorum.

8 D. Members of the council appointed pursuant to
9 Subsection A of this section are entitled to receive per diem
10 and mileage pursuant to the provisions of the Per Diem and
11 Mileage Act."

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

14 "6-8-3. COUNCIL TERMS AND QUALIFICATIONS.--

15 A. Members of the council appointed pursuant to
16 Subsection A of Section 6-8-2 NMSA 1978 shall serve for
17 staggered terms of five years. Members of the council shall
18 serve until their successors are appointed and have
19 qualified.

20 B. The members of the council appointed pursuant
21 to Subsection A of Section 6-8-2 NMSA 1978 shall:

22 (1) be qualified by competence and no less
23 than ten years' experience in the field of investment
24 management, investment accounting, investment risk management
25 or governance in public or private entities;

1 (2) be citizens of the United States and
2 residents of New Mexico; and

3 (3) not be eligible for membership on the
4 council if convicted of a felony or of a misdemeanor
5 involving moral turpitude.

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

1 office or employment in a political party.

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

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

14 "6-8-4. INVESTMENT OFFICE--STATE INVESTMENT OFFICER--
15 TERMS.--

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

19 B. The state investment officer shall be appointed
20 by the council with the advice and consent of the senate.
21 The state investment officer shall devote the officer's
22 entire time and attention to the duties of that office and
23 shall not engage in any other occupation or profession or
24 hold any other public office, appointive or elective. The
25 state investment officer shall be a person qualified, by at

1 least ten years' training and investment experience, to
2 direct the work of the investment office and shall have had
3 at least five years' professional experience as an investment
4 officer. The state investment officer shall receive a salary
5 to be determined by the council.

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

10 SECTION 4. Section 6-8-5 NMSA 1978 (being Laws 1957,
11 Chapter 179, Section 5, as amended) is amended to read:

12 "6-8-5. BOND--STAFF--BUDGET.--

13 A. Before the state investment officer or other
14 responsible employee of the investment office enters upon the
15 officer's or employee's duties, the secretary shall require
16 an individual bond or include the state investment officer
17 and other responsible employees under a blanket bond for an
18 amount and for a coverage deemed best to protect the state's
19 interest. The bond premiums shall be paid by the state.

20 B. The state investment officer shall annually
21 prepare a budget for administering and investing all funds
22 managed by the investment office, which shall be reviewed by
23 the council. Any funds provided for the operating budget of
24 the investment office shall be appropriated from the assets
25 of the land grant permanent funds, the severance tax

1 permanent fund, funds available for investment pursuant to
2 Subsection I of Section 6-8-7 NMSA 1978 or any other funds
3 managed by the investment office, as authorized by law;
4 however, in regard to the land grant permanent funds,
5 appropriation shall be made from earnings on investments of
6 the land grant permanent funds before distribution to the
7 income funds during the period prior to the date the United
8 States congress consents to the provisions of Constitutional
9 Amendment 1 approved at the 1996 general election.

10 C. Amounts budgeted or appropriated from the land
11 grant permanent funds and the severance tax permanent fund
12 for the costs of administering and investing those funds
13 shall be in addition to the amounts distributed to the
14 beneficiaries of the land grant permanent funds and to the
15 general fund from the severance tax permanent fund as
16 provided by law; provided that amounts budgeted or
17 appropriated from the land grant permanent funds shall be
18 made from earnings on investments of the funds before
19 distribution to the income funds during the period prior to
20 the date the United States congress consents to the
21 provisions of Constitutional Amendment 1 approved at the 1996
22 general election.

23 D. The state investment officer shall appoint all
24 employees of the investment office."

25 SECTION 5. Section 6-8-7 NMSA 1978 (being Laws 1957,

1 Chapter 179, Section 7, as amended) is amended to read:

2 "6-8-7. POWERS AND DUTIES OF THE STATE INVESTMENT
3 COUNCIL AND STATE INVESTMENT OFFICER--INVESTMENT POLICY--
4 INVESTMENT MANAGERS.--

5 A. Subject to the limitations, conditions and
6 restrictions contained in policymaking regulations or
7 resolutions adopted by the council, the council may make
8 purchases, sales, exchanges, investments and reinvestments of
9 the assets of all funds in accordance with the Uniform
10 Prudent Investor Act. The state investment officer and the
11 council are trustees of all funds under their control and
12 shall see that money invested is at all times handled in the
13 best interests of the state. The council may delegate
14 administrative and investment-related functions to the state
15 investment officer.

16 B. The state investment officer shall formulate
17 and recommend to the council for approval investment policies
18 pertaining to the kind or nature of investments and
19 limitations, conditions and restrictions upon the methods,
20 practices or procedures for investment, reinvestment,
21 purchase, sale or exchange transactions that should govern
22 the activities of the investment office.

23 C. The council shall meet no fewer than ten times
24 annually and at the call of the chair or when three members
25 request a meeting in writing, to consult with the state

1 investment officer concerning the work of the investment
2 office. The council shall have access to all files and
3 records of the investment office and shall require the state
4 investment officer to report on and provide information
5 necessary to the performance of council functions. The
6 council may hire one or more investment management or
7 consulting firms to advise the council with respect to the
8 council's investments and pay reasonable compensation for
9 such advisory services from the assets of the applicable
10 funds, subject to budgeting and appropriation by the
11 legislature. The terms of any such investment management
12 services contract shall incorporate the statutory
13 requirements for investment of funds under the council's
14 jurisdiction.

15 D. The council shall provide an opportunity for
16 public comment at meetings of the council. Advance notice of
17 meetings shall be published on the council's web site at
18 least ten days in advance of the meeting.

19 E. All funds managed by the council shall be
20 managed in accordance with the Uniform Prudent Investor Act.

21 F. The council, the state investment officer, any
22 person providing investment advice to the council, state
23 investment officer or investment office staff for a fee or
24 other compensation and all persons exercising discretionary
25 authority or control of funds under the management of the

1 council are fiduciaries.

2 G. The council may contract for legal services for
3 litigation on a contingent or partly contingent fee basis,
4 subject to an expedited solicitation process devised and
5 approved by the council; provided that:

6 (1) amounts recovered by the legal services
7 contractor shall be deposited in the state investment council
8 suspense fund;

9 (2) the council shall submit each proposed
10 contract to the attorney general and the department for
11 review of the contingency fee. The attorney general's and
12 the department's review shall take into account the
13 complexity of the factual and legal issues presented by the
14 claims to be pursued under the contract. If the attorney
15 general or the department advises the council that the
16 proposed contingency fee is not reasonable, the council may
17 nevertheless approve the contract and the contingency fee by
18 a majority vote of its members; and

19 (3) each prospective legal services
20 contractor seeking to represent the council on a contingent
21 or partly contingent fee basis shall file with the council
22 the disclosure required by Section 13-1-191.1 NMSA 1978
23 disclosing all campaign contributions made to the governor,
24 attorney general, state treasurer or any member of the
25 council, or to a political committee that is intended to aid

1 or promote the nomination or election of any candidate to a
2 state office if the committee is:

3 (a) established by any of the foregoing
4 persons or their agents;

5 (b) established in consultation with or
6 at the request of any of the foregoing persons or their
7 agents; or

8 (c) controlled by one of the foregoing
9 persons or their agents.

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

21 I. For funds available for investment for more
22 than one year, the council may contract with any state agency
23 to provide investment advisory or investment management
24 services, separately or through a pooled investment fund,
25 provided the state agency enters into a joint powers

1 agreement with the council and that state agency pays at
2 least the direct cost of such services. Notwithstanding any
3 statutory provision governing state agency investments, the
4 council may invest funds available from a state agency
5 pursuant to a joint powers agreement in any type of
6 investment permitted for the land grant permanent funds under
7 the prudent investor rule. In performing investment services
8 for a state agency, the council, the state investment officer
9 and investment office staff are exempt from the New Mexico
10 Uniform Securities Act. As used in this subsection, "state
11 agency" means any branch, agency, department, board,
12 instrumentality, institution or political subdivision of the
13 state, the New Mexico finance authority, the New Mexico
14 mortgage finance authority, the small business investment
15 corporation and any tax-exempt private endowment entity whose
16 sole beneficiary is a state agency.

17 J. The state investment officer shall provide
18 quarterly performance reports to the legislative finance
19 committee. Annually, the council shall provide written
20 investment policies to the legislative finance committee."

21 SECTION 6. Section 6-8-14 NMSA 1978 (being Laws 1957,
22 Chapter 179, Section 14, as amended) is amended to read:

23 "6-8-14. MONTHLY REPORTS.--No later than thirty days
24 after the close of each month, the state investment officer
25 shall submit to the secretary and the council a report of the

1 operations of the office during the past month. Each report
2 shall give a complete statement of the state investment
3 portfolio as of the time of the report and, in addition,
4 shall include a detailed summary of the month's investment,
5 reinvestment, purchase, sale and exchange transactions,
6 setting forth the investments bought, sold or exchanged, the
7 dates thereof, the prices paid or obtained, the names of the
8 dealers involved, fees paid for each transaction, disclosure
9 of contractor arrangements and a statement of the funds or
10 accounts referred to herein. The reports shall be published
11 on the web site of the council and shall be open for
12 inspection to the public and the press in the office of the
13 state investment officer."

14 SECTION 7. Section 6-8-20 NMSA 1978 (being Laws 1987,
15 Chapter 219, Section 3, as amended) is amended to read:

16 "6-8-20. PRIVATE EQUITY INVESTMENT ADVISORY COMMITTEE
17 CREATED--MEMBERSHIP--DUTIES--TERMS--LIABILITIES--CONFLICT OF
18 INTEREST.--

19 A. There is created the "private equity investment
20 advisory committee" to the council. The committee consists
21 of the state investment officer, a member of the council
22 appointed by the council and three members who are qualified
23 by competence and experience in finance and investment and
24 knowledgeable about the private equity investment process and
25 who are appointed by the council.

1 B. Members appointed by the council, except the
2 council member, shall be appointed for three-year terms;
3 provided that the terms of the initial committee members
4 shall be staggered so that the term of one member expires
5 each year. After the initial appointments, all appointed
6 members shall be appointed for three-year terms. Members
7 shall serve until their successors are appointed. A vacancy
8 occurring other than by expiration of term shall be filled in
9 the same manner as the original appointment, but only for the
10 unexpired term.

11 C. The committee shall review and make
12 recommendations to the council on investments authorized
13 pursuant to Sections 7-27-5.15 and 7-27-5.26 NMSA 1978 and
14 all other private equity investments and shall advise the
15 council in matters and policies related to such investments.
16 The committee shall establish policies for national private
17 equity fund investments, New Mexico private equity fund
18 investments and New Mexico film investments and shall make
19 copies available to interested parties.

20 D. Members of the committee shall receive per diem
21 and mileage as provided for nonsalaried public officers in
22 the Per Diem and Mileage Act and shall receive no other
23 compensation, perquisite or allowance.

24 E. The committee shall elect annually a chair from
25 among its members and may elect other officers as necessary.

1 The committee shall meet upon the call of the chair or the
2 state investment officer.

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

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

10 H. The state investment officer may enter into
11 contracts with investment advisors for private equity fund
12 investments and film fund investments authorized pursuant to
13 Sections 7-27-5.15 and 7-27-5.26 NMSA 1978 and all other
14 private equity investments and may pay budgeted expenses for
15 the advisors from the assets of any fund administered under
16 the supervision of the council, as applicable.

17 I. As used in this section, "private equity
18 investments" means any legal entity that has as its primary
19 business activity the investment of funds in return for
20 equity in or debt of businesses for the purpose of providing
21 capital for startup, expansion, new product development,
22 recapitalization or a similar business purpose."

23 SECTION 8. Section 58-29-4 NMSA 1978 (being Laws 2000,
24 Chapter 97, Section 6, as amended) is amended to read:

25 "58-29-4. SMALL BUSINESS INVESTMENT CORPORATION

1 CREATED--POWERS OF THE CORPORATION.--

2 A. The "small business investment corporation" is
3 created as a nonprofit, independent, public corporation. The
4 corporation may:

5 (1) sue and be sued in all actions arising
6 out of any act or omission in connection with its business or
7 affairs;

8 (2) enter into any contracts or obligations
9 relating to the corporation that are authorized or permitted
10 by law;

11 (3) cooperate with small business
12 development centers, regional economic development districts
13 and parties that have demonstrated abilities and
14 relationships in providing financial services to new and
15 emerging businesses;

16 (4) make investments that consider the
17 enhancement of economic development objectives of the state
18 as described in the Small Business Investment Act; and

19 (5) make, alter or repeal such rules with
20 respect to the corporation's operations as are necessary to
21 carry out its functions and duties in the administration of
22 the Small Business Investment Act.

23 B. The corporation shall not be considered a state
24 agency for any purpose; provided, however, that the
25 corporation may be considered a state agency for the purpose

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1 of contracting with the state investment council for the
2 investment of funds. The corporation is exempted from the
3 provisions of the Personnel Act and the Procurement Code.

4 C. Except as provided in the Tort Claims Act, the
5 state shall not be liable for any obligations incurred by the
6 corporation."

7 SECTION 9. TEMPORARY PROVISION--TRANSITION MEMBERSHIP
8 OF STATE INVESTMENT COUNCIL.--

9 A. The four public members serving on the state
10 investment council who were appointed by the New Mexico
11 legislative council shall continue to serve until their terms
12 expire or they resign or are removed.

13 B. Members of the state investment council shall
14 be appointed pursuant to Paragraphs (5) through (8) of
15 Subsection A of Section 6-8-2 NMSA 1978 as vacancies occur on
16 the board pursuant to Subsection A of this section and shall
17 serve on an interim basis until confirmed by the senate. The
18 four appointing entities shall, by lot, determine the order
19 in which they will appoint replacement members to the
20 council.

21 SECTION 10. EFFECTIVE DATE.--The effective date of the
22 provisions of this act is July 1, 2013. _____

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24 OFFICE OF THE CLERK

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LEGISLATIVE

s/John A. Sanchez
John A. Sanchez, President
Senate

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

s/W. Ken Martinez
W. Ken Martinez, Speaker
House of Representatives

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

Approved by me this _____ day of _____, 2013

s/Governor Susana Martinez
Governor Susana Martinez
State of New Mexico

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