



State of New Mexico

RECEIVED

2011 APR -8 AM 8:53

OFFICE OF
SECRETARY OF STATE

Susana Martinez
Governor

April 8, 2011

SENATE EXECUTIVE MESSAGE NO. 44

The Honorable Timothy Z. Jennings, President Pro Tempore
And Members of the New Mexico State Senate
State Capitol Building
Santa Fe, New Mexico 87501

Dear President Pro Tempore Jennings and Members of the Senate:

Pursuant to the Constitution of the State of New Mexico, Article IV, Section 22, I hereby VETO and am returning SENATE RULES COMMITTEE SUBSTITUTE FOR SENATE BILLS 17 & 64, as amended, with emergency clause, enacted by the Fiftieth Legislature, First Session, 2011

This bill removes the governor as a member of the State Investment Council.

A chief priority for my administration is to increase transparency. I have demonstrated this commitment in a number of ways, including my direction to the State Investment Council (SIC) to webcast its meetings and allow the public to view its deliberations and final determinations. Decisions made by the SIC should be based solely on sound financial policy. Political influence should not dictate investment decisions.

I am concerned that while this bill seeks to remove one elected representative from the council, it does nothing to address the membership of the other two elected officials. This includes the State treasurer who has petitioned the legislature to allow a designee to serve in his place without ensuring the designee possessed relevant financial experience.

Additionally, the Ennis Knupp Fiduciary Review of the State Investment Council reported last year, "The complexities of the portfolios and the fiduciary requirement to prudently invest the assets impose a continuing responsibility on council members and staff alike to stay abreast of the trends and ever-evolving best practices among institutional investors." Furthermore, the report noted: "Lack of experience and knowledge can be a concern if council members become overly reliant on consultants and staff and do not apply adequate oversight, which potentially could lead to liability."

SENATE EXECUTIVE MESSAGE NO. 44

The Honorable Timothy Z. Jennings

April 8, 2011

Page 2

Therefore, as I stated during the legislative session, it is in the best interest of the state if each elected representative appoints a representative who has at least 10 years of investment experience. However, this legislation failed to include this commonsense provision which, in the aftermath of recent financial scandals, I believe is a necessary step toward restoring public trust.

Respectfully yours,



Susana Martinez

Governor

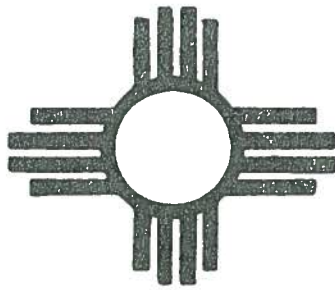
RECEIVED FROM THE OFFICE OF THE GOVERNOR

Time: 8:53 a.m. p.m.
Date: April 8 2011

By Billy U
Secretary of State

Time: _____ a.m. p.m.
Date: _____ 2011

By _____
Chief Clerk of the Senate



The Legislature
of the
State of New Mexico

50th Legislature, 1st Session

LAWS 2011

CHAPTER _____

SENATE RULES COMMITTEE SUBSTITUTE FOR

SENATE BILLS 17 & 64, as amended,
with emergency clause

Introduced by

VETOED



1 AN ACT

2 RELATING TO PUBLIC FINANCES; CHANGING THE MEMBERSHIP, POWERS
3 AND DUTIES OF THE STATE INVESTMENT COUNCIL; PROVIDING FOR THE
4 ELECTION OF THE CHAIR AND VICE CHAIR OF THE COUNCIL;
5 EXTENDING REPORTING DEADLINES; DECLARING AN EMERGENCY.

6
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

10 "6-8-2. STATE INVESTMENT COUNCIL.--

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

12 The council shall be composed of:

13 (1) the state treasurer;

14 (2) the commissioner of public lands;

15 (3) the secretary;

16 (4) one public member appointed by the
17 president pro tempore of the senate with the advice and
18 consent of the senate;

19 (5) one public member appointed by the
20 minority floor leader of the senate with the advice and
21 consent of the senate;

22 (6) one public member appointed by the
23 speaker of the house of representatives with the advice and
24 consent of the senate;

25 (7) one public member appointed by the

1 minority floor leader of the house of representatives with
2 the advice and consent of the senate; and

3 (8) three members appointed by the governor
4 with the advice and consent of the senate.

5 B. No more than two members of the council
6 appointed pursuant to Paragraphs (4) through (7) of
7 Subsection A of this section shall be members of the same
8 political party.

9 C. The chair and the vice chair of the council
10 shall be selected by the council from among the members
11 appointed pursuant to Paragraphs (4) through (8) of
12 Subsection A of this section for terms of two years, provided
13 that the chair and the vice chair shall serve staggered
14 terms, shall serve no more than two consecutive terms and the
15 vice chair elected in 2011 shall serve a one-year term to
16 allow for staggered terms.

17 D. All actions of the council shall be by majority
18 vote, and a majority of the members shall constitute a
19 quorum.

20 E. Members of the council appointed pursuant to
21 Paragraphs (4) through (8) of Subsection A of this section
22 shall be reimbursed per diem and mileage pursuant to the
23 provisions of the Per Diem and Mileage Act."

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

1 "6-8-3. COUNCIL TERMS AND QUALIFICATIONS.--

2 A. Members of the council appointed pursuant to
3 Paragraphs (4) through (8) of Subsection A of Section 6-8-2
4 NMSA 1978, with the advice and consent of the senate, shall
5 serve for staggered terms of five years. Members of the
6 council shall serve until their successors are appointed and
7 have qualified.

8 B. The members of the council appointed pursuant
9 to Paragraphs (4) through (8) of Subsection A of Section
10 6-8-2 NMSA 1978 shall be qualified by competence and no less
11 than ten years experience in the field of investment or
12 finance. A member of the council shall not have had any
13 contracts to do business with the state investment council,
14 the investment office, the office of the state treasurer, the
15 educational retirement board, the public employees retirement
16 association, the New Mexico finance authority or the state
17 board of finance for a period of two calendar years prior to
18 the person's appointment to the council and shall not enter
19 into any contracts to do business with any of the named state
20 agencies or instrumentalities for a period of two calendar
21 years after the end of the term for which the member was
22 appointed. Members of the council and officers and employees
23 of the council shall be governed by the provisions of the
24 Governmental Conduct Act. Nothing in this section or in the
25 Governmental Conduct Act shall be construed as prohibiting an

1 officer of a financial institution from participating as a
2 member of the council in setting general policies of the
3 council, nor shall any provision of the Governmental Conduct
4 Act prohibit the council or the state treasurer from
5 depositing funds under the jurisdiction of the council in any
6 financial institution. A council member shall not hold an
7 office or employment in a political party.

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

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

20 "6-8-4. INVESTMENT OFFICE--STATE INVESTMENT OFFICER--
21 TERMS.--

22 A. There is established an "investment office".
23 The chief administrative officer of the office shall be known
24 as the "state investment officer".

25 B. The state investment officer shall be appointed

1 by the council with the advice and consent of the senate.
2 The state investment officer shall devote the officer's
3 entire time and attention to the duties of that office and
4 shall not engage in any other occupation or profession or
5 hold any other public office, appointive or elective. The
6 officer shall be a person qualified, by training and
7 investment experience, to direct the work of the investment
8 office and shall have had at least five years' professional
9 experience as an investment officer. The officer shall
10 receive a salary to be determined by the council.

11 C. The state investment officer shall serve at the
12 pleasure of the council."

13 SECTION 4. Section 6-8-7 NMSA 1978 (being Laws 1957,
14 Chapter 179, Section 7, as amended) is amended to read:

15 "6-8-7. POWERS AND DUTIES OF THE STATE INVESTMENT
16 COUNCIL AND STATE INVESTMENT OFFICER--INVESTMENT POLICY--
17 INVESTMENT MANAGERS.--

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

1 best interests of the state. The council may delegate
2 administrative and investment-related functions to the state
3 investment officer.

4 B. The state investment officer shall formulate
5 and recommend to the council for approval investment policies
6 pertaining to the kind or nature of investments and
7 limitations, conditions and restrictions upon the methods,
8 practices or procedures for investment, reinvestment,
9 purchase, sale or exchange transactions that should govern
10 the activities of the investment office.

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

1 jurisdiction.

2 D. The council shall provide an opportunity for
3 public comment at meetings of the council. Advance notice of
4 meetings shall be published on the council's web site and in
5 a newspaper of general circulation at least ten days in
6 advance of the meeting.

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

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

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

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

21 I. The state investment officer shall provide
22 quarterly performance reports to the legislative finance
23 committee. Annually, the council shall provide written
24 investment policies to the legislative finance committee."

25 SECTION 5. Section 6-8-14 NMSA 1978 (being Laws 1957,

1 Chapter 179, Section 14, as amended) is amended to read:

2 "6-8-14. MONTHLY REPORTS.--No later than thirty days
3 after the close of each month, the state investment officer
4 shall submit to the secretary and the council a report of the
5 operations of the office during the past month. Each report
6 shall give a complete statement of the state investment
7 portfolio as of the time of the report and, in addition,
8 shall include a detailed summary of the month's investment,
9 reinvestment, purchase, sale and exchange transactions,
10 setting forth the investments bought, sold or exchanged, the
11 dates thereof, the prices paid or obtained, the names of the
12 dealers involved, fees paid for each transaction, disclosure
13 of contractor arrangements and a statement of the funds or
14 accounts referred to herein. The reports shall be published
15 on the web site of the council and shall be open for
16 inspection to the public and the press in the office of the
17 state investment officer."

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

20 "6-8-20. PRIVATE EQUITY INVESTMENT ADVISORY COMMITTEE
21 CREATED--MEMBERSHIP--DUTIES--TERMS--LIABILITIES--CONFLICT OF
22 INTEREST.--

23 A. There is created the "private equity investment
24 advisory committee" to the council. The committee consists
25 of the state investment officer, a member of the council

1 appointed by the council and three members who are qualified
2 by competence and experience in finance and investment and
3 knowledgeable about the private equity investment process and
4 who are appointed by the council.

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

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

24 D. Members of the committee shall receive per diem
25 and mileage as provided for nonsalaried public officers in

1 the Per Diem and Mileage Act and shall receive no other
2 compensation, perquisite or allowance.

3 E. The committee shall elect annually a chair from
4 among its members and may elect other officers as necessary.
5 The committee shall meet upon the call of the chair or the
6 state investment officer.

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

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

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

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

1 recapitalization or a similar business purpose."

2 SECTION 7. TEMPORARY PROVISION--TRANSITION MEMBERSHIP
3 OF STATE INVESTMENT COUNCIL.--

4 A. On January 1, 2013, the chief financial officer
5 appointed by the governor is no longer a member of the state
6 investment council.

7 B. Within thirty days of January 1, 2013, the
8 governor shall appoint a member of the state investment
9 council, pursuant to Paragraph (8) of Subsection A of Section
10 6-8-2 NMSA 1978, who shall serve on an interim basis until
11 confirmed by the senate.

12 C. The four public members serving on the state
13 investment council that were appointed by the New Mexico
14 legislative council shall continue to serve until their terms
15 expire or they resign or are removed.

16 D. Members of the state investment council shall
17 be appointed pursuant to Paragraphs (4) through (7) of
18 Subsection A of Section 6-8-2 NMSA 1978 as vacancies occur on
19 the board pursuant to Subsection C of this section and shall
20 serve on an interim basis until confirmed by the senate. The
21 four appointing entities shall, by lot, determine the order
22 in which they will appoint replacement members to the
23 council.

24 SECTION 8. EFFECTIVE DATE.--The effective date of
25 Sections 1, 2 and 7 of this act is January 1, 2013.

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

SRC/SB 17 & 64
Page 13

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

OFFICE OF THE CLERK
SOUTH WEST 64 P. 10
B0000000

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

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

s/Ben Lujan
Ben Lujan, Speaker
House of Representatives

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

Approved by me this _____ day of _____, 2011

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

GOVERNOR