The Legislature
of the
State of New Mexico

52nd Legislature, 1st Session

LAWS 2015

CHAPTER 95

SENATE FINANCE COMMITTEE SUBSTITUTE FOR

SENATE BILL 174

Introduced by
CHAPTER 95

AN ACT

RELATING TO PUBLIC FINANCES; MAKING ADMINISTRATIVE CHANGES
APPLICABLE TO THE STATE INVESTMENT COUNCIL, STATE INVESTMENT
OFFICER AND INVESTMENT OFFICE AND LIMITING THEIR LIABILITY;
ELIMINATING THE PRIVATE EQUITY INVESTMENT ADVISORY COMMITTEE;
PROVIDING FOR INDEMNIFICATION.

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

SECTION 1. Section 6-8-1 NMSA 1978 (being Laws 1957,
Chapter 179, Section 1, as amended by Laws 1997, Chapter 135,
Section 1 and by Laws 1997, Chapter 183, Section 1) is
amended to read:

"6-8-1. DEFINITIONS.--As used in Chapter 6, Article 8
NMSA 1978:
A. "council" means the state investment council;
B. "department" means the department of finance
and administration;
C. "land grant permanent funds" means the
permanent school fund established pursuant to the provisions
of Article 12, Section 2 of the constitution of New Mexico
and all other permanent funds derived from lands granted or
confirmed to the state by the act of congress of
June 20, 1910, entitled "An act to enable the people of
New Mexico to form a constitution and state government and be
admitted into the union on an equal footing with the original
states";
E. "permanent funds" means the land grant permanent funds, severance tax permanent fund, tobacco settlement permanent fund and water trust fund;
F. "severance tax permanent fund" means the fund established pursuant to the provisions of Article 8, Section 10 of the constitution of New Mexico;
G. "tobacco settlement permanent fund" means the fund established pursuant to the provisions of Section 6-4-9 NMSA 1978; and
H. "water trust fund" means the fund established pursuant to the provisions of Article 16, Section 6 of the constitution of New Mexico."

SECTION 2. Section 6-8-3 NMSA 1978 (being Laws 1957, Chapter 179, Section 3, as amended) is amended to read:
"6-8-3. COUNCIL TERMS AND QUALIFICATIONS.--
A. Members of the council appointed pursuant to Paragraphs (6) and (7) of Subsection A of Section 6-8-2 NMSA 1978, with the advice and consent of the senate, shall serve for staggered terms of five years. Members of the council shall serve until their successors are appointed and have qualified.
B. The members of the council appointed pursuant
to Paragraphs (6) and (7) of Subsection A of Section 6-8-2
NMSA 1978 shall be qualified by competence and no less than
ten years' experience in the field of investment management,
investment risk management, corporate governance, investment
accounting or finance. A member of the council shall not
have had any contracts to do business with the council, the
investment office, the office of the state treasurer, the
educational retirement board, the public employees retirement
association, the New Mexico finance authority or the state
board of finance for a period of two calendar years prior to
the person's appointment to the council and shall not enter
into any contracts to do business with any of the named state
agencies or instrumentalities for a period of two calendar
years after the end of the term for which the member was
appointed. Members of the council and officers and employees
of the council shall be governed by the provisions of the
Governmental Conduct Act. Nothing in this section or in the
Governmental Conduct Act shall be construed as prohibiting an
officer of a financial institution from participating as a
member of the council in setting general policies of the
council, nor shall any provision of the Governmental Conduct
Act prohibit the council or the state treasurer from
depositing funds under the jurisdiction of the council in any
financial institution. A council member shall not hold an
office or employment in a political party.
C. The member appointed pursuant to Paragraph (5) of Subsection A of Section 6-8-2 NMSA 1978 shall serve at the pleasure of the governor. A member of the council appointed pursuant to Paragraphs (6) and (7) of Subsection A of Section 6-8-2 NMSA 1978 may be removed from the council by the appointing person or entity, for failure to attend three consecutive meetings or other cause, in the manner provided for removal of members of boards of regents under Article 12, Section 13 of the constitution of New Mexico. A vacancy in the membership of the council occurring other than by expiration of term shall be filled in the same manner as the original appointment but for the unexpired term only."

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

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

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

B. The state investment officer shall be appointed by the council. The state investment officer shall devote the officer's entire time and attention to the duties of that office and shall not engage in any other occupation or profession or hold any other public office, appointive or elective. The state investment officer shall be an
individual qualified by at least ten years of investment and executive experience to direct the work of the investment office. The state investment officer shall appoint a deputy state investment officer, with at least seven years' professional experience in the field of institutional investment management, to serve as the chief investment officer. The state investment officer shall receive a salary to be determined by the council.

C. The state investment officer shall serve at the will of the council."

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

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

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

B. The state investment officer shall annually prepare a budget for administering and investing all funds managed by the investment office, which shall be reviewed and approved by the council. Any funds provided for the
operating budget of the investment office shall be
appropriated by the legislature from the assets of the land
grant permanent funds, the severance tax permanent fund,
funds available for investment pursuant to Subsection I of
Section 6-8-7 NMSA 1978 or any other funds managed by the
investment office, as authorized by law.

C. Amounts budgeted or appropriated from the land
grant permanent funds and the severance tax permanent fund
for the costs of administering and investing those funds
shall be in addition to the amounts distributed to the
beneficiaries of the land grant permanent funds and to the
general fund from the severance tax permanent fund as
provided by law.

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

SECTION 5. Section 6-8-7 NMSA 1978 (being Laws 1957,
Chapter 179, Section 7, as amended) is amended to read:
"6-8-7. POWERS AND DUTIES OF THE STATE INVESTMENT
COUNCIL AND STATE INVESTMENT OFFICER--INVESTMENT POLICY--
INVESTMENT MANAGERS.--

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

E. The state investment officer shall formulate
and recommend to the council for approval investment
regulations or resolutions pertaining to the kind or nature
of investments and limitations, conditions and restrictions
upon the methods, practices or procedures for investment,
reinvestment, purchase, sale or exchange transactions that
should govern the activities of the investment office.

C. The council shall meet at least ten times per
year, and as often as exigencies may demand, to consult with
the state investment officer concerning the work of the
investment office. The council shall have access to all
files and records of the investment office and shall require
the state investment officer to report on and provide
information necessary to the performance of council
functions. The council may hire investment management or
consulting firms to advise the council with respect to the
council's investment decisions for the investment of funds
managed by the investment office and pay reasonable
compensation for such management or consulting services from
the assets of the applicable funds, subject to budgeting and
appropriation by the legislature. The terms of any such
investment management or consulting services contract shall
incorporate the statutory requirements for investment of
funds under the council's jurisdiction. Prior to being
hired, a prospective investment management, advisory or
consulting services firm shall submit to the council a
disclosure detailing all campaign contributions made within
the last two years by the firm or the principals of the firm
to any member of the council, or to a political committee or
other entity that is intended to aid or promote the
nomination or election of any council member to a political
office.

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

E. All funds managed by the state investment
officer shall be managed in accordance with the Uniform
Prudent Investor Act. The council may form and use
committees to study and make recommendations to the council.
Prior to commencing work for the council, a committee member
who is not a member of the council shall submit to the
council a disclosure detailing all campaign contributions
made within the last two years to any member of the council or to a political committee or other entity that is intended to aid or promote the nomination or election of any council member to a political office.

F. Fiduciaries of the permanent funds are:

(1) the council;

(2) the state investment officer and investment office staff;

(3) any person providing investment advice to the council, the state investment officer or investment office staff for an investment management, advisory or consulting services fee; and

(4) all persons exercising discretionary authority over or control of funds under the management of the council.

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

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

(2) the council shall submit each proposed contract to the attorney general and the department for review of the contingency fee. The attorney general's and
the department's review shall take into account the
complexity of the factual and legal issues presented by the
claims to be pursued under the contract. If the attorney
general or the department advises the council that the
proposed contingency fee is not reasonable, the council may
nevertheless approve the contract and the contingency fee by
a majority vote of its members; and
(3) each prospective legal services
contractor seeking to represent the council on a contingent
or partly contingent fee basis shall file with the council
the disclosure required by Section 13-1-191.1 NMSA 1978
disclosing all campaign contributions made to the governor,
attorney general, state treasurer or any member of the
council, or to a political committee that is intended to aid
or promote the nomination or election of any candidate to a
state office if the committee is:
(a) established by any of the foregoing
persons or their agents;
(b) established in consultation with or
at the request of any of the foregoing persons or their
agents; or
(c) controlled by one of the foregoing
persons or their agents.

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

I. For funds available for investment for more than one year, the council may contract with any state agency to provide investment advisory or investment management services, separately or through a pooled investment fund; provided that the state agency enters into a joint powers agreement with the council and that the state agency pays at least the direct cost of such services. Notwithstanding any statutory provision governing state agency investments, the council may invest funds available from a state agency pursuant to a joint powers agreement in any type of investment permitted for the land grant permanent funds under the prudent investor rule. In performing investment services for a state agency, the council and the state investment officer and investment office staff are exempt from the New Mexico Uniform Securities Act. As used in this subsection, "state agency" means any branch, agency,
department, board, instrumentality, institution or political
classification of the state, the New Mexico finance authority,
the New Mexico mortgage finance authority and any tax-exempt
private endowment entity whose sole beneficiary is a state
agency or whose beneficiaries are students attending a public
educational institution in the state.

J. The state investment officer shall provide
quarterly performance reports to the legislative finance
committee. Annually, the state investment officer shall
ratify and provide written investment policies, including any
amendments, to the legislative finance committee.

K. Council members, the state investment officer
and investment office staff and committee members appointed
by the council, jointly and severally, shall be indemnified
by the state, out of the permanent funds, from all claims,
demands, suits, actions, damages, judgments, costs, charges
and expenses, including court costs and attorney fees,
against all claims, liability, losses or damages arising from
any decisions made or actions taken while acting within the
scope of duty and pursuant to law as a council member, the
state investment officer, investment office staff or a
committee member appointed by the council. Following
indemnification, if it is shown that the indemnified person
acted fraudulently or with intentional malice, the state
shall have the right to recover from the indemnified person
any amount expended under this subsection."

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

"6-8-11. CUSTODY OF SECURITIES.--Securities purchased or held by the state investment officer or the council shall be in the custody of a custodian bank contracted pursuant to the provisions of Subsection H of Section 6-8-7 NMSA 1978."

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

"6-8-13. RECORD OF INVESTMENTS.--The investment office shall keep accurate and complete records and accounts concerning the state investment portfolio."

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

"6-8-14. MONTHLY REPORTS.--No later than twenty days after the end of each month, the state investment officer shall submit to the council a report of the operations of the investment office during the past month. Each report shall include a schedule of cumulative fiscal year actual and budgeted expenditures and a monthly summary of contributions, distributions, fees, income and net gains or losses for each permanent fund and investment pool. The reports shall be published on the web site of the council and the sunshine portal and shall be open for inspection to the public and the press in the investment office."
SECTION 9. Section 7-27-5.15 NMSA 1978 (being Laws 1990, Chapter 126, Section 5, as amended) is amended to read:

"7-27-5.15. NEW MEXICO PRIVATE EQUITY FUNDS AND BUSINESS INVESTMENTS.---

A. No more than nine percent of the market value of the severance tax permanent fund may be invested in New Mexico private equity funds or New Mexico businesses under this section.

B. In making investments pursuant to Subsection A of this section, the council shall make investments in New Mexico private equity funds or New Mexico businesses whose investments or enterprises enhance the economic development objectives of the state.

C. The state investment officer shall make investments pursuant to Subsection A of this section only upon approval of the council and within guidelines and policies established by the council.

D. As used in this section:

(1) "New Mexico business" means, in the case of a corporation or limited liability company, a business with its principal office and a majority of its full-time employees located in New Mexico or, in the case of a limited partnership, a business with its principal place of business and eighty percent of its assets located in New Mexico; and

(2) "New Mexico private equity fund" means a
limited partnership, limited liability company or corporation
organized and operating in the United States and maintaining
an office staffed by a full-time investment officer in
New Mexico that:

(a) has as its primary business
activity the investment of funds in return for equity in or
debt of businesses for the purpose of providing capital for
start-up, expansion, product or market development,
recapitalization or similar business purposes;

(b) holds out the prospects for capital
appreciation from such investments;

(c) has at least one full-time manager
with at least three years of professional experience in
assessing the growth prospects of businesses or evaluating
business plans and who has established permanent residency in
the state;

(d) is committed to investing or helps
secure investing by others, in an amount at least equal to
the total investment made by the state investment officer in
that fund pursuant to this section, in businesses with a
principal place of business in the state and that hold
promise for attracting additional capital from individual or
institutional investors nationwide for businesses in the
state; and

(e) accepts investments only from
accredited investors as that term is defined in Section 2 of the federal Securities Act of 1933, as amended (15 USCA Section 77(b)), and rules and regulations promulgated pursuant to that section, or federally recognized Indian tribes, nations and pueblos with at least five million dollars ($5,000,000) in overall investment assets.

E. The state investment officer is authorized to make investments in New Mexico businesses to create new job opportunities and to support new, emerging or expanding businesses in a manner consistent with the constitution of New Mexico if:

(1) the investments are made:

(a) in conjunction with cooperative investment agreements with parties that have demonstrated abilities and relationships in making investments in new, emerging or expanding businesses;

(b) in a New Mexico aerospace business that has received an award from the United States government or one of its agencies or instrumentalities: 1) in an amount, not less than one hundred million dollars ($100,000,000), that is equal to at least ten times the investment from the severance tax permanent fund; and 2) for the purpose of stimulating commercial enterprises; or

(c) in a New Mexico business that:

1) is established to perform technology transfer, research
and development, research commercialization, manufacturing, training, marketing or public relations in any field of science or technology, including but not limited to energy, security, defense, aerospace, automotives, electronics, telecommunications, computer and information science, environmental science, biomedical science, life science, physical science, materials science or nanoscience, using research developed in whole or in part by a state institution of higher education or a prime contractor designated as a national laboratory by an act of congress that is operating a facility in the state, or an affiliated entity; and 2) has an agreement to operate the business on state lands;

(2) an investment in any one business does not exceed ten percent of the amount available for investment pursuant to this section; and

(3) the investments represent no more than fifty-one percent of the total investment capital in a business; provided, however, that nothing in this subsection prohibits the ownership of more than fifty-one percent of the total investment capital in a New Mexico business if the additional ownership interest:

(a) is due to foreclosure or other action by the state investment officer pursuant to agreements with the business or other investors in that business;

(b) is necessary to protect the
investment; and

(c) does not require an additional investment of the severance tax permanent fund.

F. The state investment officer shall make a commitment to the small business investment corporation pursuant to the Small Business Investment Act to invest one percent of the market value of the severance tax permanent fund to create new job opportunities by providing capital for land, buildings or infrastructure for facilities to support new or expanding businesses and to otherwise make investments to create new job opportunities to support new or expanding businesses in a manner consistent with the constitution of New Mexico. On July 1 of each year, the state investment officer shall determine whether the invested capital in the small business investment corporation is less than one percent of the market value of the severance tax permanent fund. If the invested capital in the small business investment corporation equals less than one percent of the market value of the severance tax permanent fund, further commitments shall be made until the invested capital is equal to one percent of the market value of the fund.

G. The state investment officer shall report semiannually on the New Mexico private equity investments made pursuant to this section. Annually, a report shall be submitted to the legislature prior to the beginning of each
regular legislative session and a second report no later than
October 1 each year to the legislative finance committee, the
revenue stabilization and tax policy committee and any other
appropriate interim committee. Each report shall provide the
amounts invested in each New Mexico private equity fund, as
well as information about the objectives of the funds, the
companies in which each fund is invested and how each
investment enhances the economic development objectives of
the state. Each report shall provide the amounts invested in
each New Mexico business."

SECTION 10. Section 7-27-5.26 NMSA 1978 (being Laws
2000 (2nd S.S.), Chapter 6, Section 2, as amended) is amended
to read:

"7-27-5.26. INVESTMENT IN FILMS TO BE PRODUCED IN
NEW MEXICO.--

A. No more than six percent of the market value of
the severance tax permanent fund may be invested in
New Mexico film private equity funds or a New Mexico film
project under this section.

B. If an investment is made under this section,
not more than fifteen million dollars ($15,000,000) of the
amount authorized for investment pursuant to Subsection A of
this section shall be invested in any one New Mexico film
private equity fund or any one New Mexico film project.

C. The state investment officer shall make
investments pursuant to this section only upon approval of
the council after a review by the New Mexico film division of
the economic development department. The state investment
officer may make debt or equity investments pursuant to this
section only in New Mexico film projects or New Mexico film
private equity funds that invest only in film projects that:

(1) are filmed wholly or substantially in
New Mexico;

(2) have shown to the satisfaction of the
New Mexico film division that a distribution contract is in
place with a reputable distribution company;

(3) have agreed that, while filming in
New Mexico, a majority of the production crew will be
New Mexico residents;

(4) have posted a completion bond that has
been approved by the New Mexico film division; provided that
a completion bond shall not be required if the fund or
project is guaranteed pursuant to Paragraph (5) of this
subsection; and

(5) have obtained a full, unconditional and
irrevocable guarantee of repayment of the invested amount in
favor of the severance tax permanent fund:

(a) from an entity that has a credit
rating of not less than Baa or BBB by a national rating
agency;
(b) from a substantial subsidiary of an
entity that has a credit rating of not less than Baa or BBB
by a national rating agency;
(c) by providing a full, unconditional
and irrevocable letter of credit from a United States
incorporated bank with a credit rating of not less than A by
a national rating agency; or
(d) from a substantial and solvent
entity as determined by the council in accordance with its
standards and practices; or
(6) if not guaranteed pursuant to Paragraph
(5) of this subsection, have obtained no less than one-third
of the estimated total production costs from other sources as
approved by the state investment officer.

D. The state investment officer may loan at a
market rate of interest, with respect to an eligible
New Mexico film project, up to eighty percent of an expected
and estimated film production tax credit available to a film
production company pursuant to the provisions of Section
7-2F-1 NMSA 1978; provided that the film production company
agrees to name the state investment officer as its agent for
the purpose of filing an application for the film production
tax credit to which the company is entitled if the company
does not apply for the film production tax credit. The
New Mexico film division of the economic development
department shall determine the estimated amount of a film
production tax credit. The council shall establish
guidelines for the state investment officer's initiation of a
loan and the terms of the loan.

E. As used in this section:

(1) "film project" means a single media or
multimedia program, including advertising messages, fixed on
film, videotape, computer disc, laser disc or other similar
delivery medium from which the program can be viewed or
reproduced and that is intended to be exhibited in theaters;
licensed for exhibition by individual television stations,
groups of stations, networks, cable television stations or
other means or licensed for the home viewing market; and

(2) "New Mexico film private equity fund"
means any limited partnership, limited liability company or
corporation organized and operating in the United States
that:

(a) has as its primary business
activity the investment of funds in return for equity in film
projects produced wholly or partly in New Mexico;

(b) holds out the prospects for capital
appreciation from such investments; and

(c) accepts investments only from
accredited investors as that term is defined in Section 2 of
the federal Securities Act of 1933, as amended, and rules
promulgated pursuant to that section."

SECTION 11. REPEAL.--Section 6-8-20 NMSA 1978 (being Laws 1987, Chapter 219, Section 3, as amended) is repealed.
John A. Sanchez, President
Senate

Lenore M. Naranjo, Chief Clerk
Senate

Don L. Tripp, Speaker
House of Representatives

Denise Ramonas, Chief Clerk
House of Representatives

Approved by me this 24th day of April, 2015

Governor Susana Martinez
State of New Mexico