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AN ACT

RELATING TO EDUCATIONAL RETIREMENT; AUTHORIZING THE
EDUCATIONAL RETIREMENT BOARD TO SELECT A CUSTODIAL BANK AND
TO HIRE ATTORNEYS ON A CONTINGENT FEE BASIS; CREATING A
SUSPENSE FUND.

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

SECTION 1. Section 22-11-6 NMSA 1978 (being Laws 1967,
Chapter 16, Section 130) is amended to read:

"22-11-6. BOARD--POWERS--DUTIES.--

A. The board shall:

- (1) properly and uniformly enforce the Educational Retirement Act;
- (2) hire employees and delegate administrative authority to these employees;
- (3) make an actuarial report on the financial operation of the Educational Retirement Act to the legislature at each regular session every odd-numbered year;
- (4) accept donations, gifts or bequests; and
- (5) adopt regulations pursuant to the Educational Retirement Act.

B. The board may:

- (1) select and contract for the services of one or more custodial banks. For purposes of this subsection, "custodial bank" means a financial institution

1 with the general fiduciary duties to manage, control and
2 collect the assets of an investment fund, including receiving
3 all deposits and paying all disbursements as directed by
4 staff, safekeeping of assets, coordination of asset
5 transfers, timely settlement of securities transactions and
6 accurate and timely reporting by individual account and in
7 total; and

8 (2) contract for legal services for
9 litigation matters on a contingent fee basis, subject to the
10 provisions of the Procurement Code; provided that:

11 (a) the board shall submit each
12 proposed contract to the attorney general for review of the
13 contingency fee. The attorney general shall review a
14 proposed contract within thirty days after receiving the
15 contract. The review shall take into account the complexity
16 of the factual and legal issues presented by the claims to be
17 pursued under the contract. If the attorney general advises
18 the board that the proposed contingency fee is not
19 reasonable, the board may nevertheless approve the contract
20 and the contingency fee if no fewer than four members vote
21 for approval;

22 (b) each prospective contractor seeking
23 to represent the board on a contingency fee basis shall file
24 with the board the disclosure required by Section 13-1-191.1
25 NMSA 1978 disclosing all campaign contributions made to the

1 governor, attorney general, state treasurer or any member of
2 the board, or to a political committee that is intended to
3 aid or promote the nomination or election of any candidate to
4 a state office if the committee is: 1) established by any of
5 the foregoing persons or their agents; 2) established in
6 consultation with or at the request of any of the foregoing
7 persons or their agents; or 3) controlled by one of the
8 foregoing persons or their agents; and

9 (c) nothing in this paragraph shall
10 prejudice or impair the rights of a qui tam plaintiff
11 pursuant to the Fraud Against Taxpayers Act."

12 SECTION 2. Section 22-11-11 NMSA 1978 (being Laws 1967,
13 Chapter 16, Section 135) is amended to read:

14 "22-11-11. EDUCATIONAL RETIREMENT FUND--SUSPENSE
15 FUND.--

16 A. The "educational retirement fund" and the
17 "educational retirement suspense fund" are created.

18 B. The state treasurer shall be the custodian of
19 the funds, and the board shall be the trustee of the funds.

20 C. All membership fees, contributions from members
21 and local administrative units, securities evidencing the
22 investment of money from the fund, interest, gifts, grants or
23 bequests shall be deposited in the educational retirement
24 fund.

25 D. All amounts received in satisfaction of a claim SJC/SB 269
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1 brought by private attorneys on behalf of the board shall be
2 deposited into the educational retirement suspense fund. The
3 board shall disburse the compensation due the private
4 attorneys, together with reimbursement for reasonable costs
5 and expenses, in accordance with the terms of the contract
6 with the attorneys. After the disbursements have been made,
7 the balance of each deposit shall be distributed to the
8 educational retirement fund."

9 SECTION 3. Section 22-11-12 NMSA 1978 (being Laws 1967,
10 Chapter 16, Section 136, as amended) is amended to read:

11 "22-11-12. FUND--SUSPENSE FUND--DISBURSEMENTS.--The
12 state treasurer shall make disbursements from the educational
13 retirement fund or the educational retirement suspense fund
14 only on warrants issued by the department of finance and
15 administration or through any other process as approved by the
16 department of finance and administration. Warrants for
17 disbursements from the educational retirement fund or the
18 educational retirement suspense fund shall be issued by the
19 department of finance and administration only upon voucher of
20 the director."
