

SENATE RULES COMMITTEE SUBSTITUTE FOR
SENATE BILL 269

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

AN ACT

RELATING TO SPECIAL PROSECUTIONS; PROVIDING FOR AN INDEPENDENT
COUNSEL TO INVESTIGATE AND TO TAKE ACTION AGAINST ALLEGED
FRAUD AND OTHER IMPROPRIETIES ARISING FROM MANAGEMENT OF THE
STATE'S INVESTMENT FUNDS AND TO RECOVER MONEY LOST TO THE FUNDS
DUE TO FRAUD OR OTHER IMPROPRIETIES; MAKING AN APPROPRIATION;
DECLARING AN EMERGENCY.

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

Section 1. OFFICE OF INDEPENDENT COUNSEL.--

A. The "office of independent counsel" is created.
The office of independent counsel shall have the jurisdiction
and act on behalf of the state as provided in Subsection E of
this section. The person to fill the office of independent
counsel shall be an independent contractor procured by the
office of the attorney general following the competitive sealed

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1 proposal for professional services provisions of the
2 Procurement Code. The office of independent counsel shall
3 exercise its investigatory and other functions independently of
4 and without approval or control of the office of the attorney
5 general; provided that all invoices under the contract shall be
6 submitted to the office of the attorney general for approval,
7 and the office of the attorney general shall be responsible for
8 reviewing and approving invoices, ensuring compliance with
9 contract provisions and approving payments for services
10 rendered.

11 B. The person selected to fill the office of
12 independent counsel shall be an attorney with a reputation for
13 integrity and impartial decision-making and with appropriate
14 experience to ensure that an investigation will be properly,
15 expeditiously and thoroughly conducted and that any action,
16 whether administrative or civil, will be skillfully and
17 vigorously executed. The person selected shall agree that the
18 person's responsibilities as independent counsel shall take
19 first precedence over other matters in the person's
20 professional life, including the necessity to devote the
21 person's entire professional time to an investigation and
22 prosecution if conditions require that commitment.

23 C. As an exception to the provisions of Section
24 13-1-150 NMSA 1978, the original term of the contract for the
25 office of independent counsel shall be for one year and may be

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1 continued for additional one-year terms until the matter being
2 investigated or prosecuted is brought to conclusion, subject to
3 sufficient money being appropriated to continue the contract.

4 D. The office of independent counsel may administer
5 oaths and issue subpoenas, which may be enforced through any
6 district court of the state. The subpoena power is limited to
7 the office of independent counsel's jurisdiction as specified
8 in this section. Service of process shall be made by any
9 sheriff or any member of the New Mexico state police and shall
10 be served without cost to the office of independent counsel.

11 E. The jurisdiction of the office of independent
12 counsel is to investigate the loss or misuse of money from the
13 funds that are invested by the state investment officer in any
14 instance involving alleged or suspected fraud or other
15 malfeasance or negligence; to determine, if appropriate,
16 whether any money lost or misused can be recovered; and, if the
17 determination is that money can be recovered, to take any
18 appropriate administrative or civil action necessary to recover
19 the money subject to the following provisions:

20 (1) if the office of independent counsel
21 discovers or determines during its investigation or
22 administrative or civil action prosecution of a matter that any
23 activity or conduct may constitute a criminal violation, the
24 office of independent counsel shall suspend its activity in the
25 matter and refer it to the office of the attorney general;

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1 (2) if the office of the attorney general
2 accepts the referral as a criminal matter, the office of
3 independent counsel shall take no further action in the matter;
4 and

5 (3) if the office of the attorney general does
6 not accept the referral, the office of independent counsel
7 shall proceed in the matter within its administrative and civil
8 jurisdiction.

9 F. Monthly, following the inception of a contract,
10 the office of independent counsel shall report in writing the
11 status of its work to the New Mexico legislative council and
12 the legislative finance committee. When the office of
13 independent counsel makes a determination concerning whether
14 money can be recovered, and prior to any decision to take
15 administrative or civil action, the office of independent
16 counsel shall report the determination to the New Mexico
17 legislative council and to the legislative finance committee
18 and shall take no further action until the New Mexico
19 legislative council reviews the determination with the office
20 of independent counsel.

21 G. For fiscal year 2010 and each fiscal year
22 thereafter in which the contract with the office of independent
23 counsel is continued, pursuant to Sections 6-3-23 through
24 6-3-25 NMSA 1978, the office of the attorney general may
25 request budget increases from the funds managed by the state

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1 investment officer as are necessary to fund the office of
2 independent counsel contract and, if approved, the amount of
3 budget increase is appropriated.

4 Section 2. EMERGENCY.--It is necessary for the public
5 peace, health and safety that this act take effect immediately.

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