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SENATE BILL 177

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,
2000**

INTRODUCED BY
Pete Campos

AN ACT

RELATING TO INVESTMENT OF THE EDUCATIONAL RETIREMENT FUND;
AMENDING SECTION 22-11-13 NMSA 1978 (BEING LAWS 1967, CHAPTER
16, SECTION 137, AS AMENDED).

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

Section 1. Section 22-11-13 NMSA 1978 (being Laws 1967,
Chapter 16, Section 137, as amended) is amended to read:

"22-11-13. INVESTMENT OF THE FUND--INDEMNIFICATION OF
BOARD.--

~~[A. The board is authorized to invest or reinvest
the fund and may invest the fund only in the following:~~

~~(1) obligations, including but not limited
to bills, bonds or notes of the United States, United States
government-sponsored enterprises or federal agency
securities;~~

~~(2) obligations, including but not limited~~

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1 to bills, bonds and notes of governments other than the
2 United States or their political subdivisions, agencies or
3 instrumentalities, and these may be denominated in foreign
4 currencies;

5 (3) obligations, including but not limited
6 to bonds or notes of a municipality or political subdivision
7 of the state that were issued pursuant to law; provided the
8 issuer has not, within ten years prior to making the
9 investment, been in default for more than three months in the
10 payment of any part of the principal or interest on any debt
11 evidenced by its bonds, notes or obligations; and provided
12 the bonds are city or county utility, or utility district
13 revenue bonds with the revenue of such utility, other than
14 for payment of operation and maintenance expenses, pledged
15 wholly to payment of the interest on and the principal of
16 such indebtedness, and the utility project has been
17 completely self-supporting for a period of five years
18 preceding the date of the investment;

19 (4) contracts for the present purchase and
20 resale at a specified time in the future, not to exceed one
21 year, of specific securities at specified prices at a price
22 differential representing the interest income to be earned by
23 the board. No such contract shall be entered into unless the
24 contract is fully secured by obligations of the United
25 States, or other securities backed by the United States,
having a market value of at least one hundred two percent of
the amount of the contract. The collateral required in this

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1 ~~section shall be delivered to the state fiscal agent or his~~
2 ~~designee contemporaneously with the transfer of funds or~~
3 ~~delivery of the securities, at the earliest time industry~~
4 ~~practice permits, but in all cases settlement shall be on a~~
5 ~~same-day basis. No such contract shall be entered into~~
6 ~~unless the contracting bank, brokerage firm or recognized~~
7 ~~institutional investor has a net worth in excess of five~~
8 ~~hundred million dollars (\$500,000,000);~~

9 ~~(5) obligations, including but not limited~~
10 ~~to bonds, notes or commercial paper of any corporation~~
11 ~~organized within the United States; preferred stock or common~~
12 ~~stock of any corporation organized within the United States~~
13 ~~whose securities are listed on at least one national stock~~
14 ~~exchange or on the N.A.S.D. national market or American~~
15 ~~depository receipts of any corporation organized outside the~~
16 ~~United States whose securities are listed on at least one~~
17 ~~national stock exchange or on the N.A.S.D. national market;~~
18 ~~provided that the corporation shall have a minimum net worth~~
19 ~~of twenty-five million dollars (\$25,000,000); and provided~~
20 ~~that the fund shall not at any one time own more than ten~~
21 ~~percent of the voting stock of a company;~~

22 ~~(6) prime bankers' acceptances issued by~~
23 ~~money center banks;~~

24 ~~(7) obligations, including but not limited~~
25 ~~to bonds, notes or commercial paper of any corporation~~
~~organized outside of the United States, and these may be~~
~~denominated in foreign currencies; preferred stock or common~~

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1 ~~stock of any corporation organized outside of the United~~
2 ~~States whose securities are listed on at least one national~~
3 ~~or foreign stock exchange, and these may be denominated in~~
4 ~~foreign currencies; provided that the corporation shall have~~
5 ~~a minimum net worth of twenty-five million dollars~~
6 ~~(\$25,000,000); and provided that the fund shall not at any~~
7 ~~one time own more than ten percent of the voting stock of a~~
8 ~~company;~~

9 ~~(8) currency transactions, including spot or~~
10 ~~cash basis currency transactions, forward currency contracts~~
11 ~~and buying or selling options or futures on foreign~~
12 ~~currencies, but only for the purposes of hedging foreign~~
13 ~~currency risk and not for speculation;~~

14 ~~(9) stocks or shares of a diversified~~
15 ~~investment company registered under the Investment Company~~
16 ~~Act of 1940, as amended, which invests primarily in United~~
17 ~~States or non-United States fixed income securities, equity~~
18 ~~securities or short-term debt instruments pursuant to~~
19 ~~Paragraphs (1), (2), (4), (5) and (7) of this subsection,~~
20 ~~provided that the investment company has total assets under~~
21 ~~management of at least one hundred million dollars~~
22 ~~(\$100,000,000); individual, common or collective trust funds~~
23 ~~of banks or trust companies, which invest primarily in United~~
24 ~~States or non-United States fixed income securities, equity~~
25 ~~securities or short-term debt instruments pursuant to~~
~~Paragraphs (1), (2), (4), (5) and (7) of this subsection,~~
~~provided that the investment manager has assets under~~

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1 ~~management of at least one hundred million dollars~~
2 ~~(\$100,000,000); the board may allow reasonable administrative~~
3 ~~and investment expenses to be paid directly from the income~~
4 ~~or assets of these investments; or~~

5 ~~(10) industrial revenue bonds issued~~
6 ~~pursuant to the Industrial Revenue Bond Act, where both the~~
7 ~~principal and interest of the bonds are fully and~~
8 ~~unconditionally guaranteed by a lease agreement executed by a~~
9 ~~corporation organized and operating within the United States~~
10 ~~and which has net assets of at least twenty-five million~~
11 ~~dollars (\$25,000,000) and has issued securities traded on one~~
12 ~~or more national stock exchanges and where the senior~~
13 ~~securities of the guaranteeing corporation would have the~~
14 ~~equivalent of a BAA rating]~~

15 A. The board shall have full power to invest the
16 fund and may provide for the holding, purchasing, selling,
17 lending, assigning, transferring and disposing of any of the
18 securities and investments in which the fund is invested.
19 The board shall discharge its duties solely in the interest
20 of the members and beneficiaries and for the exclusive
21 purpose of providing benefits to the members and
22 beneficiaries. In investing the fund, defraying reasonable
23 expenses of administering the fund and diversifying the
24 investment of the fund, the board shall use the standard of
25 care, skill, prudence and diligence under the circumstances
then prevailing that a prudent person acting in a like
capacity and familiar with the matters would use in the

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1 conduct of an enterprise of like character and with like
2 aims. The standard requires the exercise of reasonable care,
3 skill and caution and is to be applied to investments not in
4 isolation, but in the context of the fund portfolio and as a
5 part of an overall investment strategy that should
6 incorporate risk and return objectives reasonably suited to
7 the fund.

8 B. The board or its designated agent may enter
9 into contracts for the temporary exchange of securities for
10 the use by broker-dealers, banks or other recognized
11 institutional investors, for periods not to exceed one year,
12 for a specified fee or consideration. No such contract shall
13 be entered into unless the contract is fully secured by a
14 collateralized, irrevocable letter of credit running to the
15 board, cash or equivalent collateral of at least one hundred
16 two percent of the market value of the securities plus
17 accrued interest temporarily exchanged. This collateral
18 shall be delivered to the state fiscal agent or its designee
19 contemporaneously with the transfer of funds or delivery of
20 the securities. Such contract may authorize the board to
21 invest cash collateral in instruments or securities that are
22 authorized fund investments and may authorize payment of a
23 fee from the fund or from income generated by the investment
24 of cash collateral to the borrower of securities providing
25 cash as collateral. The board may apportion income derived
from the investment of cash collateral to pay its agent in
securities lending transactions.

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1 ~~[C. Commissions paid for the purchase or sale of~~
2 ~~any securities pursuant to the provisions of the Educational~~
3 ~~Retirement Act shall not exceed brokerage rates prescribed~~
4 ~~and approved by national stock exchanges or by industry~~
5 ~~practice.~~

6 ~~D. Investment of the fund shall be made with the~~
7 ~~exercise of that degree of judgment and care, under the~~
8 ~~circumstances then prevailing, which men of prudence,~~
9 ~~discretion and intelligence exercise in the management of~~
10 ~~their own affairs, not for speculation but for investment,~~
11 ~~considering the probable safety of their capital as well as~~
12 ~~the probable income to be derived.]~~

13 C. In order to facilitate investment of the fund,
14 the board may establish a partnership, trust, limited
15 liability company, corporation, including a corporation
16 exempt from taxation under the Internal Revenue Code, or any
17 other legal entity authorized to transact business.

18 ~~[E.] D. Securities purchased for the fund shall be~~
19 ~~held in the custody of the state treasurer. At the direction~~
20 ~~of the board, the state treasurer shall deposit with a bank~~
21 ~~or trust company the securities for safekeeping or servicing.~~

22 ~~[F. The board may consult with the state~~
23 ~~investment council or the state investment officer; may~~
24 ~~request from the state investment council or the state~~
25 ~~investment officer any information, advice or recommendations~~
~~with respect to investment of the fund; may utilize the~~
~~services of the state investment council or the state~~

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1 ~~investment officer; and may act upon any advice or~~
2 ~~recommendations of the state investment council or the state~~
3 ~~investment officer. The state investment~~
4 ~~council or the state investment officer shall render~~
5 ~~investment advisory services to the board upon request and~~
6 ~~without expense to the board. The board may employ~~
7 ~~investment advisory services and pay reasonable compensation~~
8 ~~from the fund for the services.]~~

9 E. The board may also employ investment management
10 services and pay reasonable compensation from the fund for
11 the services to make investment decisions on behalf of the
12 board, within the investment objectives, policies and
13 operating guidelines as directed by the board to the
14 investment manager.

15 ~~[G.]~~ F. Members of the board, jointly and
16 individually, shall be indemnified from the fund by the state
17 from all claims, demands, suits, actions, damages, judgments,
18 costs, charges and expenses, including court costs and
19 attorneys' fees, and against all liability, losses and
20 damages of any nature whatsoever that members shall or may at
21 any time sustain by reason of any decision made in the
22 performance of their duties pursuant to this section."