

AN ACT

RELATING TO THE INVESTMENT OF PUBLIC MONEY; AMENDING CERTAIN SECTIONS OF THE NMSA 1978 PERTAINING TO THE INVESTMENT OF THE PERMANENT FUNDS; AUTHORIZING THE STATE INVESTMENT OFFICER TO INVEST FOR TAX-EXEMPT PRIVATE ENDOWMENTS WHOSE SOLE BENEFICIARY IS A STATE AGENCY.

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

Section 1. 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 STATE INVESTMENT OFFICER-

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INVESTMENT POLICY--INVESTMENT MANAGERS.--

A. Subject to the limitations, conditions and restrictions contained in policy-making regulations or resolutions adopted by the council and subject to prior authorization by the council, the state investment officer may make purchases, sales, exchanges, investments and reinvestments of the assets of all funds administered under the supervision of the council. The state investment officer shall see that money invested is at all times handled in the best interests of the state.

B. Securities or investments purchased or held may be sold or exchanged for other securities and investments; provided, however, that no sale or exchange

shall be at a price less than the going market at the time the securities or investments are sold or exchanged.

C. In purchasing bonds, the state investment officer shall require a certified or original written opinion of a reputable bond attorney or the attorney general of the state certifying the legality of the bonds to be purchased; provided, however, this written opinion may be the approving legal opinion ordinarily furnished with the bond issue.

D. 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.

E. The council shall meet at least once each month, 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 one or more investment management firms to advise the council with respect to the council's overall investment plan for the investment of all

funds managed by the investment office and pay reasonable compensation for such advisory services from the assets of the applicable funds, subject to budgeting and appropriation by the legislature. The terms of any such investment management services contract shall incorporate the statutory requirements for investment of funds under the council's jurisdiction.

F. For the purposes of the investment of all funds managed by the investment office, the state investment officer shall manage the funds in accordance with the prudent investor rule set forth in the Uniform Prudent Investor Act. With the approval of the council, the state investment officer may employ investment management services to invest the funds and may pay reasonable compensation for investment management services from the assets of the applicable funds, subject to budgeting and appropriation by the legislature.

G. For funds available for investment for more than one year, the state investment officer may contract with any state agency to provide investment advisory or investment management services, separately or through a pooled investment fund, provided the state agency enters into a joint powers agreement with the council and that state agency pays at least the direct cost of such services. Notwithstanding any statutory provision governing state agency investments, the state investment officer 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 are exempt from the New Mexico Securities Act of 1986. As used in this subsection, "state agency" means any branch, agency, department, board, instrumentality, institution or political subdivision of the state, the New Mexico finance authority and any tax-exempt private endowment entity whose sole beneficiary is a state agency."

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

"6-8-9. SECURITIES AND INVESTMENT. --

A. Money made available from the land grant permanent funds for investment for a period in excess of one year may be invested in the following classes of securities and investments:

(1) bonds, notes or other obligations of the United States government, its agencies, government-sponsored enterprises, corporations or instrumentalities and that portion of bonds, notes or other obligations guaranteed as to principal and interest and issued by the United States government, its agencies, government-sponsored enterprises, corporations or instrumentalities or issued pursuant to acts or programs authorized by the United States government;

(2) bonds, notes, debentures and other obligations issued by the state of New Mexico or a municipality or other political subdivision of the state that are secured by an investment grade bond rating from a national rating service, pledged revenue or other collateral or insurance necessary to satisfy the standard of prudence set forth in Section 6-8-10 NMSA 1978;

(3) bonds, notes, debentures, instruments, conditional sales agreements, securities or other evidences of indebtedness of any corporation, partnership or trust organized and operating within the United States rated not less than Baa or BBB or the equivalent by a national rating service;

(4) bonds, notes, debentures, instruments, conditional sales agreements, securities or other evidences of indebtedness rated not less than BB or B or the national association of insurance commissioners' equivalent by a national rating service. An investment made under this paragraph shall be in publicly traded debt issues with an outstanding par value of at least one hundred million dollars (\$100,000,000) and issued by a corporation, partnership or trust listed on a national exchange and organized and operating within the United States; provided that investments made pursuant to this paragraph shall not exceed three percent of the market value of the land grant permanent funds, calculated at the time of investment;

(5) notes or obligations securing loans or participation in loans to business concerns or other organizations that are obligated to use the loan proceeds within New Mexico, to the extent that loans are secured by first mortgages on real estate located in New Mexico and are further secured by an assignment of rentals, the payment of which is fully guaranteed by the United States in an amount sufficient to pay all principal and interest on the mortgage;

(6) common and preferred stocks and convertible issues of any corporation; provided that it has securities listed on one or more national stock exchanges or included in a nationally recognized list of stocks; and provided further that the fund shall not own more than five percent of the voting stock of any company;

(7) real estate investments, including real property and undivided interests in real property, debt instruments secured by first liens on real property or limited partnership interests; provided that the total value of investments made under this paragraph shall not exceed three percent of the market value of the land grant permanent funds, calculated at the time of investment;

(8) securities of non-United States governmental, quasi-governmental, partnership, trust or corporate entities, and these may be denominated in foreign currencies; provided:

(a) aggregate non-United States investments shall not exceed fifteen percent of the book value of the land grant permanent funds;

(b) for non-United States stocks and non-United States bonds and notes, issues permitted for purchase shall be limited to those issues traded on a national stock exchange or included in a nationally recognized list of stocks or bonds;

(c) currency contracts may be used for investing in non-United States securities only for the purpose of hedging foreign currency risk and not for speculation;

(d) the investment management services of a trust company or national bank exercising trust powers or of an investment counseling firm may be employed; and

(e) reasonable compensation for investment management services and other administrative and investment expenses related to these investments shall be paid directly from the assets of the funds, subject to budgeting and appropriation by the legislature; and

(9) stocks or shares of a diversified investment company registered under the federal Investment Company Act of 1940, as amended, and listed securities of long-term unit investment trusts or individual, common or collective trust funds of banks or trust companies that invest primarily in equity securities authorized in

Paragraphs (6) and (8) of this subsection; provided that the investment company has total assets under management of at least one hundred million dollars (\$100,000,000); and provided further that the council may allow reasonable administrative and investment expenses to be paid directly from the assets derived from these investments, subject to budgeting and appropriation by the legislature.

B. Not more than sixty-five percent of the book value of the land grant permanent funds shall be invested at any given time in securities described in Paragraphs (6), (8) and (9) of Subsection A of this section, and no more than ten percent of the book value of the land grant permanent funds shall be invested at any given time in securities described in Paragraph (3) of Subsection A of this section that are rated Baa or BBB. Assets of the land grant permanent funds may be combined for investment in common pooled funds to effectuate efficient management.

C. Commissions paid for the purchase and sale of any security shall not exceed brokerage rates prescribed and approved by national stock exchanges or by industry practice. "

Section 3. Section 6-8-10 NMSA 1978 (being Laws 1957, Chapter 179, Section 10) is amended to read:

"6-8-10. INVESTMENT STANDARDS. -- Investments made pursuant to Sections 6-8-1 through 6-8-16 NMSA 1978 shall be made in accordance with the prudent investor rule set forth



in the Uniform Prudent Investor Act."

Section 4. Section 6-8-19 NMSA 1978 (being Laws 1987, Chapter 126, Section 1, as amended) is amended to read:

"6-8-19. SHORT-TERM INVESTMENTS--REPURCHASE AGREEMENTS AND SECURITIES LENDING.--

A. Money in or derived from the land grant permanent funds made available for investment for a period of less than one year may be invested in:

(1) contracts for the present purchase and resale at a specified time in the future, not to exceed one year, of specific securities at specified prices at a price differential representing the interest income to be earned by the state. No such contract shall be invested in unless the contract is fully secured by:

(a) obligations of the United States or other securities backed by the United States if the obligations or securities have a market value of at least one hundred two percent of the amount of the contract; or

(b) A1 or P1 commercial paper, corporate obligations rated AA or better and maturing in five years or less or asset-backed securities rated AAA if the commercial paper, corporate obligations or asset-backed securities have a market value of at least one hundred two percent of the market value of the contract;

(2) security-lending contracts for the temporary exchange of state-owned securities for the use of

broker-dealers, banks or other recognized institutional investors in securities, for periods not to exceed one year, for a specified fee rate. No such contract shall be invested in unless the contract is fully secured by exchange of an irrevocable letter of credit running to the state, cash or equivalent collateral of at least one hundred two percent of the market value of the securities plus accrued interest temporarily exchanged. Such contracts may authorize the state investment officer to invest cash collateral in instruments or securities that are authorized investments for the funds and may authorize payment of a fee from the funds, or from income generated by the investment of cash collateral, to the borrower of securities providing cash as collateral. The state investment officer may enter into a contract that apportions income derived from the investment of cash to pay its agent in securities-lending transactions;

(3) commercial paper issued by corporations organized and operating within the United States and rated "prime" quality by a national rating service;

(4) prime bankers' acceptances issued by money center banks;

(5) funding agreements rated at least AA by a nationally recognized rating agency. As used in this paragraph, "funding agreement" means a floating or variable rate insurance company contract that is a general obligation

of an insurance company organized and operating within the United States and that is senior to all other debt issued by the company; and

(6) time deposits, with banks incorporated in the United States or time deposits that are fully guaranteed by banks incorporated in the United States.

B. The collateral required for either of the forms of investment specified in Paragraph (1) or (2) of Subsection A of this section shall be delivered to the state fiscal agent or its designee contemporaneously with the transfer of funds or delivery of the securities at the earliest time industry practice permits, but in all cases settlement shall be on a same-day basis.

C. Neither of the contracts specified in Paragraph (1) or (2) of Subsection A of this section shall be invested in unless the contracting bank, brokerage firm or recognized institutional investor has a net worth in excess of five hundred million dollars (\$500,000,000) or is a primary broker or primary dealer."

Section 5. Section 6-8-20 NMSA 1978 (being Laws 1987, Chapter 219, Section 3, as amended) is amended to read:

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

A. There is created the "private equity investment advisory committee" to the council. The

committee consists of the state investment officer, a member of the council appointed by the governor and three members who are qualified by competence and experience in finance and investment and knowledgeable about the private equity investment process and who are appointed by the governor.

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

C. The committee shall review and make recommendations to the council on investments authorized pursuant to Sections 6-8-21, 7-27-5.6, 7-27-5.15 and 7-27-5.26 NMSA 1978 and shall advise the council in matters and policies related to such investments. The committee shall establish policies for national private equity fund investments, New Mexico private equity fund investments and New Mexico film private equity fund investments not less often than annually and shall make copies available to interested parties.

D. Members of the committee shall receive per

diem and mileage as provided for nonsalaried public officers in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

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

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

G. No person may be a member of the committee if any recommendation, action or decision of the committee will or is likely to result in direct, measurable economic gain to that person or his employer.

H. The state investment officer may enter into contracts with investment advisors for private equity fund investments and film fund investments authorized pursuant to Sections 6-8-21, 7-27-5.6, 7-27-5.15 and 7-27-5.26 NMSA 1978 and may pay budgeted expenses for the advisors from the assets of any fund administered under the supervision of the council, as applicable. "

Section 6. Section 6-8-21 NMSA 1978 (being Laws 1997, Chapter 183, Section 5) is amended to read:

"6-8-21. PRIVATE EQUITY INVESTMENTS. --

A. The state investment officer may make commitments to private equity funds to invest up to six

percent of the market value of the land grant permanent funds in accordance with the provisions of this section. If invested capital should at any time exceed six percent of the market value of the land grant permanent funds, no further commitments shall be made until the invested capital is less than six percent of the market value of the land grant permanent funds.

B. Not more than ten percent of the amount authorized for investment pursuant to Subsection A of this section shall be invested in any one private equity fund. The amount invested in any one private equity fund shall not exceed twenty percent of the committed capital of that fund.

C. In making investments pursuant to this section, the state investment officer and the council shall give consideration to investments in private equity funds whose investments enhance the economic development objectives of the state; provided such investments offer a rate of return and safety comparable to other private equity investments currently available.

D. The state investment officer shall make investments pursuant to this section only upon the approval of the council and upon review of the recommendation of the private equity investment advisory committee.

E. As used in this section:

(1) "committed capital" means the sum of

the fixed amounts of money that accredited investors have obligated for investment in a private equity fund and which fixed amounts may be invested in that fund in one or more payments over time;

(2) "invested capital" means the original capital contributed less any return of cost by the private equity funds; and

(3) "private equity fund" means a limited partnership, limited liability company or corporation 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, new product development, recapitalization or similar business purposes;

(b) holds out prospects for capital appreciation from such investments comparable to similar investments made by other professionally managed private equity funds;

(c) has a minimum committed capital of fifteen million dollars (\$15,000,000);

(d) accepts investments only from accredited investors, as that term is defined in Section 2 of the federal Securities Act of 1933, as amended, 15 U. S. C. Section 77(b), and rules and regulations promulgated pursuant to that section; and

(e) has full-time management with at

least five years of experience in managing private equity funds. "

Section 7. Section 7-27-5.1 NMSA 1978 (being Laws 1983, Chapter 306, Section 8, as amended) is amended to read:

"7-27-5.1. MARKET RATE INVESTMENTS. --

A. Money made available from the severance tax permanent fund for investment for a period in excess of one year in market rate investments may be invested in the following classes of securities and investments:

(1) bonds, notes or other obligations of the United States government, its agencies, government-sponsored enterprises, corporations or instrumentalities and that portion of bonds, notes or other obligations guaranteed as to principal and interest and issued by the United States government, its agencies, government-sponsored enterprises, corporations or instrumentalities or issued pursuant to acts or programs authorized by the United States government;

(2) bonds, notes, debentures and other obligations issued by the state of New Mexico or a municipality or other political subdivision of the state that are secured by an investment grade bond rating from a national rating service, pledged revenue or other collateral or insurance necessary to satisfy the standard of prudence set forth in Section 6-8-10 NMSA 1978;

(3) bonds, notes, debentures, instruments,



conditional sales agreements, securities or other evidences of indebtedness of any corporation, partnership or trust organized and operating within the United States rated not less than Baa or BBB or the equivalent by a national rating service;

(4) bonds, notes, debentures, instruments, conditional sales agreements, securities or other evidences of indebtedness rated not less than BB or B or the national association of insurance commissioners' equivalent by a national rating service. An investment made under this paragraph shall be in publicly traded debt issues with an outstanding par value of at least one hundred million dollars (\$100,000,000) and issued by a corporation, partnership or trust listed on a national exchange and organized and operating within the United States; provided that investments made pursuant to this paragraph shall not exceed three percent of the market value of the severance tax permanent fund, calculated at the time of investment;

(5) notes or obligations securing loans or participation in loans to business concerns or other organizations that are obligated to use the loan proceeds within New Mexico, to the extent that loans are secured by first mortgages on real estate located in New Mexico and are further secured by an assignment of rentals, the payment of which is fully guaranteed by the United States in an amount sufficient to pay all principal and interest on the

mortgage;

(6) common and preferred stocks and convertible issues of any corporation; provided that it has securities listed on one or more national stock exchanges or included in a nationally recognized list of stocks; and provided further that the fund shall not own more than five percent of the voting stock of any company;

(7) real estate investments, including real property and undivided interests in real property, debt instruments secured by first liens on real property, or limited partnership interests; provided that the total value of investments made under this paragraph shall not exceed three percent of the market value of the severance tax permanent fund, calculated at the time of investment;

(8) securities of non-United States governmental, quasi-governmental, partnership, trust or corporate entities, and these may be denominated in foreign currencies; provided:

(a) aggregate non-United States investments shall not exceed fifteen percent of the book value of the severance tax permanent fund;

(b) for non-United States stocks and non-United States bonds and notes, issues permitted for purchase shall be limited to those issues traded on a national stock exchange or included in a nationally recognized list of stocks or bonds;

(c) currency contracts may be used for investing in non-United States securities only for the purpose of hedging foreign currency risk and not for speculation;

(d) the investment management services of a trust company or national bank exercising trust powers or of an investment counseling firm may be employed; and

(e) reasonable compensation for investment management services and other administrative and investment expenses related to these investments shall be paid directly from the assets of the fund, subject to budgeting and appropriation by the legislature;

(9) stocks or shares of a diversified investment company registered under the federal Investment Company Act of 1940, as amended, and listed securities of long-term unit investment trusts or individual, common or collective trust funds of banks or trust companies that invest primarily in equity securities authorized in Paragraphs (6) and (8) of this subsection; provided that the investment company has total assets under management of at least one hundred million dollars (\$100,000,000); and provided further that the council may allow reasonable administrative and investment expenses to be paid directly from the assets derived from these investments, subject to budgeting and appropriation by the legislature; and

(10) participation interests in New Mexico

real-property-related business loans. The actual amount invested under this paragraph shall not exceed ten percent of the severance tax permanent fund and shall be included in any minimum amount of severance tax permanent fund investments required to be placed in New Mexico certificates of deposit. Investments authorized in this paragraph are subject to the following:

(a) the state investment officer may purchase from eligible institutions a participation interest of up to eighty percent in any loan secured by a first mortgage or a deed of trust on the real property located in New Mexico of an eligible business entity, or its subsidiary, that is operating or shall use loan proceeds to commence operations within New Mexico plus any other guarantees or collateral that may be judged by the eligible institution or the state investment officer to be prudent. To be eligible for investment the following minimum requirements shall be met: 1) the loan proceeds shall be used exclusively for the purpose of expanding or establishing businesses in New Mexico, including the refinancing of such businesses for expansion purposes only. If a portion of the loan proceeds were used for refinancing or repaying an existing loan and payment of principal and interest to the state has not been made within ninety days from the due date, unless extended pursuant to agreement between the originating institution and the state investment

officer, the originating institution shall buy back the state's participation interest in the loan and begin foreclosure proceedings; 2) eligible business entities shall not include public utilities or financial institutions or shopping centers, apartment buildings or other such passive investments; 3) the minimum loan amount shall be two hundred fifty thousand dollars (\$250,000) and may be met by packaging up to ten separate loans satisfying the requirements of this paragraph. The maximum loan amount shall be two million dollars (\$2,000,000); 4) the loan maturity shall be not less than five years or more than thirty years; 5) the maximum loan-to-value ratio shall be seventy-five percent and based on current appraisal of the real property by an appraiser who is licensed or certified in New Mexico and approved by the state investment officer, which shall be made not more than one hundred eighty days from the loan origination date; 6) the interest rate of the loan shall be fixed for five years and shall be adjusted at every fifth anniversary of the note to the rate specified in Item 7) of this subparagraph; 7) the yield on the state's participation interest shall in no case be less than the greater of the then-prevailing yield on United States treasury securities of five-year maturity plus two and one-half percent or the yield received by the lending institution calculated exclusive of servicing fees; 8) if payment of principal or interest has not been made within

one hundred eighty days from the due date, unless extended pursuant to agreement between the originating institution and the state investment officer, the originating institution shall buy back the state's participation interest in the loan, substitute another qualifying loan or begin foreclosure proceedings; and 9) if foreclosure proceedings are commenced, the state and the originating institution shall share in proportion to their participation interest, as provided in this subparagraph, in the legal and other foreclosure expenses and in any loss incurred as a result of a foreclosure sale;

(b) a standardized participation agreement, the form of which shall be approved by the attorney general's office, shall be executed between the investment office and each eligible originating institution. The participation agreement shall provide that the originating institution shall not assign its interest in any loan covered by the agreement without the prior written consent of the state investment officer;

(c) a formal forward commitment program may be instituted by the state investment officer with the approval of the council;

(d) the council shall adopt regulations: 1) defining passive investments; 2) establishing underwriting guidelines; 3) ensuring diversification across a variety of types of collateral,

types of businesses and regions of the state; and  
4) providing for the review by the state investment officer of servicing and other fees that may be charged by the eligible institution;

(e) eligible institutions include banks, savings and loan associations and credit unions operating in the state; and

(f) real property is defined as land and attached buildings, but excludes all interests that may be secured by a security interest under Article 9 of the Uniform Commercial Code, and mineral resource values.

B. Not more than sixty-five percent of the book value of the severance tax permanent fund shall be invested at any given time in securities described in Paragraphs (6), (8) and (9) of Subsection A of this section, and no more than ten percent of the book value of the severance tax permanent fund shall be invested at any given time in securities described in Paragraph (3) of Subsection A of this section that are rated Baa or BBB. Assets of the severance tax permanent fund may be combined for investment in common pooled funds to effectuate efficient management.

C. Commissions paid for the purchase and sale of any security shall not exceed brokerage rates prescribed and approved by national stock exchanges or by industry practice. "

1987, Chapter 219, Section 2, as amended) is amended to read:

"7-27-5.6. PRIVATE EQUITY INVESTMENTS. --

A. The state investment officer may make commitments to private equity funds to invest up to six percent of the market value of the severance tax permanent fund in accordance with the provisions of this section. If invested capital should at any time exceed six percent of the market value of the severance tax permanent fund, no further commitments shall be made until the invested capital is less than six percent of the market value of the severance tax permanent fund.

B. Not more than ten percent of the amount authorized for investment pursuant to Subsection A of this section shall be invested in any one private equity fund. The amount invested in any one private equity fund shall not exceed twenty percent of the committed capital of that fund.

C. In making investments pursuant to this section, the state investment officer and the council shall give consideration to investments in private equity funds whose investments enhance the economic development objectives of the state, provided such investments offer a rate of return and safety comparable to other private equity investments currently available.

D. The state investment officer shall make investments pursuant to this section only upon approval of



the council and upon review of the recommendation of the private equity investment advisory committee.

E. As used in this section:

(1) "committed capital" means the sum of the fixed amounts of money that accredited investors have obligated for investment in a private equity fund and which fixed amounts may be invested in that fund in one or more payments over time;

(2) "invested capital" means the original capital contributed less any return of cost by the private equity funds; and

(3) "private equity fund" means a limited partnership, limited liability company or corporation 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, new product development, recapitalization or similar business purposes;

(b) holds out the prospects for capital appreciation from such investments comparable to similar investments made by other professionally managed private equity funds;

(c) has a minimum committed capital of fifteen million dollars (\$15,000,000);

(d) accepts investments only from accredited investors, as that term is defined in Section 2

of the federal Securities Act of 1933, as amended, 15 U.S.C. Section 77(b), and rules and regulations promulgated pursuant to that section; and

(e) has full-time management with at least five years of experience in managing private equity funds. "

Section 9. Section 7-27-5.14 NMSA 1978 (being Laws 1990, Chapter 126, Section 4) is amended to read:

"7-27-5.14. FINDINGS AND PURPOSE. --The legislature finds that the health of the New Mexico economy is heavily dependent on the establishment and expansion of small businesses and that the lack of available private equity is an impediment to the start-up and growth of businesses in the state. The legislature further finds that the commercialization of technology conceived in the universities and the federal scientific and engineering laboratories and test facilities in the state is likely to occur elsewhere unless sources of local private equity are developed. The purpose of Section 7-27-5.15 NMSA 1978 is to provide a mechanism whereby the establishment of locally managed private equity funds, whose investment policies are supportive of the economic welfare of New Mexico, will be stimulated. "

Section 10. Section 7-27-5.15 NMSA 1978 (being Laws 1990, Chapter 126, Section 5, as amended by Laws 2000, Chapter 76, Section 1 and also by Laws 2000, Chapter 97,

Section 2) is amended to read:

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

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

B. If an investment is made under Subsection A of 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 private equity fund. The amount invested in any one New Mexico private equity fund shall not exceed fifty percent of the committed capital of that fund.

C. In making investments pursuant to Subsection A of this section, the council shall give consideration to investments in New Mexico private equity funds whose investments enhance the economic development objectives of the state.

D. The state investment officer shall make investments pursuant to Subsection A of this section only upon approval of the council and upon review of the recommendation of the private equity investment advisory committee. The state investment officer is authorized to make investments pursuant to Subsection A of this section contingent upon a New Mexico private equity fund securing paid-in investments from other accredited investors for the

balance of the minimum committed capital of the fund.

E. As used in this section:

(1) "committed capital" means the sum of the fixed amounts of money that accredited investors have obligated for investment in a New Mexico private equity fund and which fixed amounts may be invested in that fund on one or more payments over time; and

(2) "New Mexico private equity fund" means any 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 a minimum committed capital of fifteen million dollars (\$15,000,000);

(d) 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;

(e) 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

(f) accepts investments only from accredited investors as that term is defined in Section 2 of the federal Securities Act of 1933, as amended, (15 U. S. C. Section 77(b)) and rules and regulations promulgated pursuant to that section.

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-fourth of one percent of the market value of the severance tax permanent fund by July 1, 2001 to create new job opportunities by providing land, buildings or infrastructure for facilities to support new or expanding businesses. If invested capital in the small business investment corporation should at any time fall below one-fourth of 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-fourth of one percent of the market value of the fund. As used in this subsection, "invested

capital" means the original capital contributed less any return of cost by the private equity funds."

Section 11. Section 7-27-5.23 NMSA 1978 (being Laws 1997, Chapter 45, Section 3) is amended to read:

"7-27-5.23. SHORT-TERM INVESTMENTS--REPURCHASE AGREEMENTS AND SECURITIES LENDING.--

A. Money in or derived from the severance tax permanent fund made available for investment for a period of less than one year may be invested in:

(1) contracts for the present purchase and resale at a specified time in the future, not to exceed one year, of specific securities at specified prices at a price differential representing the interest income to be earned by the state. No such contract shall be invested in unless the contract is fully secured by:

(a) obligations of the United States or other securities backed by the United States if the obligations or securities have a market value of at least one hundred two percent of the amount of the contract; or

(b) A1 or P1 commercial paper, corporate obligations rated AA or better and maturing in five years or less or asset-backed securities rated AAA if the commercial paper, corporate obligations or asset-backed securities have a market value of at least one hundred two percent of the market value of the contract;

(2) securities-lending contracts for the

temporary exchange of state-owned securities for the use of broker-dealers, banks or other recognized institutional investors in securities, for periods not to exceed one year, for a specified fee rate. No such contract shall be invested in unless the contract is fully secured by exchange of an irrevocable letter of credit running to the state, cash or equivalent collateral of at least one hundred two percent of the market value of the securities plus accrued interest temporarily exchanged. Such contracts may authorize the state investment officer to invest cash collateral in instruments or securities that are authorized investments for the funds and may authorize payment of a fee from the funds, or from income generated by the investment of cash collateral, to the borrower of securities providing cash as collateral. The state investment officer may enter into a contract that apportions income derived from the investment of cash to pay its agent in securities-lending transactions;

(3) commercial paper issued by corporations organized and operating within the United States and rated "prime" quality by a national rating service;

(4) prime bankers' acceptances issued by money center banks;

(5) funding agreements rated at least AA by a nationally recognized rating agency. As used in this paragraph, "funding agreement" means a floating or variable

rate insurance company contract that is a general obligation of an insurance company organized and operating within the United States and that is senior to all other debt issued by the company; and

(6) time deposits, with banks incorporated in the United States or time deposits that are fully guaranteed by banks incorporated in the United States.

B. The collateral required for either of the forms of investment specified in Paragraph (1) or (2) of Subsection A of this section shall be delivered to the state fiscal agent or its designee contemporaneously with the transfer of funds or delivery of the securities at the earliest time industry practice permits, but in all cases settlement shall be on a same-day basis.

C. Neither of the contracts specified in Paragraphs (1) and (2) of Subsection A of this section shall be invested in unless the contracting bank, brokerage firm or recognized institutional investor has a net worth in excess of five hundred million dollars (\$500,000,000) or is a primary broker or primary dealer."

Section 12. Section 7-27-5.26 NMSA 1978 (being Laws 2000 (2nd S.S.), Chapter 6, Section 2) is amended to read:

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

A. No more than one-half of one percent of the market value of the severance tax permanent fund may be



invested in New Mexico film private equity funds under this section.

B. If an investment is made under this section, not more than seven million five hundred thousand dollars (\$7,500,000) 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.

C. The state investment officer shall make investments pursuant to this section only upon approval of the state investment council after a review by the private equity investment advisory committee and the New Mexico film division of the economic development department. The state investment officer may make an investment pursuant to this section only in a New Mexico film private equity fund that invests only in film projects that:

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

(2) have obtained no less than one-third of the estimated total production costs from other sources;

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

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

(5) have posted a completion bond that has

been approved by the New Mexico film division.

D. As used in this section:

(1) "committed capital" means the sum of the fixed amounts of money that accredited investors have obligated for investment in a New Mexico film private equity fund, which fixed amounts may be invested in that fund in one or more payments over time;

(2) "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

(3) "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." \_\_\_\_\_