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SENATE BILL 232

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Ben D. Altamirano

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-- 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

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1 [has the power to] may make purchases, sales, exchanges,
2 investments and reinvestments of the assets of all funds
3 administered under the supervision of the council. The state
4 investment officer [~~is charged with the duty of seeing~~] shall
5 see that money invested is at all times handled in the best
6 interests of the state.

7 B. Securities or investments purchased or held ~~may~~
8 be sold or exchanged for other securities and investments;
9 provided, however, that no sale or exchange shall be at a
10 price less than the going market at the time the securities or
11 investments are sold or exchanged.

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

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

25 E. The council shall meet at least once each

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1 month, and as often as exigencies may demand, to consult with
2 the state investment officer concerning the work of the
3 investment office. The council shall have access to all files
4 and records of the investment office and shall require the
5 state investment officer to report on and provide information
6 necessary to the performance of council functions. The
7 council may hire one or more investment management firms to
8 advise the council with respect to the council's overall
9 investment plan for the investment of all funds managed by the
10 investment office and pay reasonable compensation for such
11 advisory services from the assets of the applicable funds,
12 subject to budgeting and appropriation by the legislature.
13 The terms of any such investment management services contract
14 shall incorporate the statutory requirements for investment of
15 funds under the council's jurisdiction.

16 F. For the purposes of the investment of all funds
17 managed by the investment office, the state investment officer
18 shall manage the funds [~~on a total rate of return basis in a~~
19 ~~prudent manner, unless a higher standard of care is required~~
20 ~~by law~~] in accordance with the prudent investor rule set forth
21 in the Uniform Prudent Investor Act. With the approval of the
22 council, the state investment officer may employ investment
23 management services to invest the funds and may pay reasonable
24 compensation for investment management services from the
25 assets of the applicable funds, subject to budgeting and

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1 appropriation by the legislature.

2 G. For funds available for investment for more
3 than one year, the state investment officer may contract with
4 any state agency to provide investment advisory or investment
5 management services, separately or through a pooled investment
6 fund, provided the state agency enters into a joint powers
7 agreement with the council and that state agency pays at least
8 the direct cost of such services. Notwithstanding any
9 statutory provision governing state agency investments, the
10 state investment officer may invest funds available from a
11 state agency pursuant to a joint powers agreement in any type
12 of investment permitted for the land grant permanent funds
13 under the ~~[same standard of care applicable to investments of~~
14 ~~the land grant permanent funds]~~ prudent investor rule. In
15 performing investment services for a state agency, the council
16 and the state investment officer are exempt from the New
17 Mexico Securities Act of 1986. As used in this subsection,
18 "state agency" means any branch, agency, department, board,
19 instrumentality, institution or political subdivision of the
20 state, ~~[and]~~ the New Mexico finance authority and any tax-
21 exempt private endowment entity whose sole beneficiary is a
22 state agency. "

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

25 "6-8-9. SECURITIES AND INVESTMENT. --

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

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

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

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

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1 (4) bonds, notes, debentures, instruments,
2 conditional sales agreements, securities or other evidences of
3 indebtedness rated not less than BB or B or the national
4 association of insurance commissioners' equivalent by a
5 national rating service. An investment made under this
6 paragraph shall be in publicly traded debt issues with an
7 outstanding par value of at least one hundred million dollars
8 (\$100,000,000) and issued by a corporation, partnership or
9 trust listed on a national exchange and organized and
10 operating within the United States; provided that investments
11 made pursuant to this paragraph shall not exceed three percent
12 of the market value of the land grant permanent funds,
13 calculated at the time of investment;

14 [~~(4)~~] (5) notes or obligations securing loans
15 or participation in loans to business concerns or other
16 organizations that are obligated to use the loan proceeds
17 within New Mexico, to the extent that loans are secured by
18 first mortgages on real estate located in New Mexico and are
19 further secured by an assignment of rentals, the payment of
20 which is fully guaranteed by the United States in an amount
21 sufficient to pay all principal and interest on the mortgage;

22 [~~(5)~~] (6) common and preferred stocks and
23 convertible issues of any corporation; provided that it has
24 securities listed on one or more national stock exchanges or
25 included in a nationally recognized list of stocks; and

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1 provided further that the fund shall not own more than five
2 percent of the voting stock of any company;

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

10 [~~(6)~~] (8) securities of non-United States
11 governmental, quasi-governmental, partnership, trust or
12 corporate entities, and these may be denominated in foreign
13 currencies; provided:

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

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

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

25 (d) the investment management services

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1 of a trust company or national bank exercising trust powers or
2 of an investment counseling firm may be employed; and

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

8 [~~(7)~~] (9) stocks or shares of a diversified
9 investment company registered under the federal Investment
10 Company Act of 1940, as amended, and listed securities of
11 long-term unit investment trusts or individual, common or
12 collective trust funds of banks or trust companies that invest
13 primarily in equity securities authorized in Paragraphs [~~(5)~~
14 ~~and~~] (6) and (8) of this subsection; provided that the
15 investment company has total assets under management of at
16 least one hundred million dollars (\$100,000,000); and provided
17 further that the council may allow reasonable administrative
18 and investment expenses to be paid directly from the assets
19 derived from these investments, subject to budgeting and
20 appropriation by the legislature.

21 B. Not more than sixty-five percent of the book
22 value of the land grant permanent funds shall be invested at
23 any given time in securities described in Paragraphs [~~(5)~~]
24 (6), (8) and [~~(7)~~] (9) of Subsection A of this section, and no
25 more than ten percent of the book value of the land grant

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1 permanent funds shall be invested at any given time in
2 securities described in Paragraph (3) of Subsection A of this
3 section that are rated Baa or BBB. Assets of the land grant
4 permanent funds may be combined for investment in common
5 pooled funds to effectuate efficient management.

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

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

11 "6-8-10. INVESTMENT STANDARDS.--Investments made
12 pursuant to [~~this act~~] Sections 6-8-1 through 6-8-16 NMSA 1978
13 shall be made [~~with the exercise of that degree of judgment~~
14 ~~and care, under circumstances then prevailing, which men of~~
15 ~~prudence, discretion and intelligence exercise in the~~
16 ~~management of their own affairs, not for speculation but for~~
17 ~~investment, considering the probable safety of their capital~~
18 ~~as well as the probable income to be derived] in accordance
19 with the prudent investor rule set forth in the Uniform
20 Prudent Investor Act."~~

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

23 "6-8-19. SHORT-TERM INVESTMENTS--REPURCHASE AGREEMENTS
24 AND SECURITIES LENDING.--

25 A. Money in or derived from the land grant

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1 permanent funds made available for investment for a period of
2 less than one year may be invested in:

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

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

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

19 (2) security-lending contracts for the
20 temporary exchange of state-owned securities for the use of
21 broker-dealers, banks or other recognized institutional
22 investors in securities, for periods not to exceed one year,
23 for a specified fee rate. No such contract shall be invested
24 in unless the contract is fully secured by exchange of an
25 irrevocable letter of credit running to the state, cash or

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1 equivalent collateral of at least one hundred two percent of
2 the market value of the securities plus accrued interest
3 temporarily exchanged. Such contracts may authorize the state
4 investment officer to invest cash collateral in instruments or
5 securities that are authorized investments for the funds and
6 may authorize payment of a fee from the funds, or from income
7 generated by the investment of cash collateral, to the
8 borrower of securities providing cash as collateral. The
9 state investment officer may enter into a contract that
10 apportions income derived from the investment of cash to pay
11 its agent in securities-lending transactions;

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

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

17 (5) funding agreements rated at least AA by
18 at least two nationally recognized rating agencies. As used
19 in this paragraph, "funding agreement" means a floating or
20 variable rate insurance company contract that is a general
21 obligation of an insurance company organized and operating
22 within the United States and that is senior to all other debt
23 issued by the company; and

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

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1 by banks incorporated in the United States, that are rated A1
2 or P1 by a nationally recognized rating agency.

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

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

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

18 "6-8-20. [~~VENTURE CAPITAL~~] PRIVATE EQUITY INVESTMENT
19 ADVISORY COMMITTEE CREATED-- MEMBERSHIP-- DUTIES-- TERMS--
20 LIABILITIES-- CONFLICT OF INTEREST. --

21 A. There is created the "[~~venture capital~~] private
22 equity investment advisory committee" to the council. The
23 committee consists of the state investment officer, a member
24 of the council appointed by the governor and three members who
25 are qualified by competence and experience in finance and

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1 investment and knowledgeable about the [~~venture capital~~]
2 private equity investment process and who are appointed by the
3 governor.

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

14 C. The committee shall review and make
15 recommendations to the council on investments authorized
16 pursuant to Sections 6-8-21, 7-27-5.6, [~~and~~] 7-27-5.15 and
17 7-27-5.26 NMSA 1978 and shall advise the council in matters
18 and policies related to such investments. The committee shall
19 establish policies for [~~venture capital fund and New Mexico~~
20 ~~venture capital~~] national private equity fund investments, New
21 Mexico private equity fund investments and New Mexico film
22 private equity fund investments not less often than annually
23 and shall make copies available to interested parties.

24 D. Members of the committee shall receive per diem
25 and mileage as provided for nonsalaried public officers in the

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1 Per Diem and Mileage Act and shall receive no other
2 compensation, perquisite or allowance.

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

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

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

14 H. The state investment officer may enter into [a
15 contract] contracts with [an] investment [~~adviser for venture~~
16 ~~capital~~] advisors for private equity fund investments and film
17 fund investments authorized pursuant to Sections 6-8-21,
18 7-27-5.6, [and] 7-27-5.15 and 7-27-5.26 NMSA 1978 and may pay
19 budgeted expenses for the [~~venture capital fund adviser~~]
20 advisors from the assets of any fund administered under the
21 supervision of the council, as applicable. "

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

24 "6-8-21. [~~VENTURE CAPITAL~~] PRIVATE EQUITY INVESTMENTS. --

25 A. The state investment officer may make

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1 commitments to ~~[venture capital]~~ private equity funds to
2 invest up to ~~[three]~~ six percent of the market value of the
3 land grant permanent funds in accordance with the provisions
4 of this section. If invested capital should at any time
5 exceed ~~[three]~~ six percent of the market value of the land
6 grant permanent funds, no further commitments shall be made
7 until the invested capital is less than ~~[three]~~ six percent of
8 the market value of the land grant permanent funds.

9 B. Not more than ten percent of the amount
10 authorized for investment pursuant to Subsection A of this
11 section shall be invested in any one ~~[venture capital]~~ private
12 equity fund. The amount invested in any one ~~[venture capital]~~
13 private equity fund shall not exceed twenty percent of the
14 committed capital of that fund.

15 C. In making investments pursuant to this section,
16 the state investment officer and the council shall give
17 consideration to investments in ~~[venture capital]~~ private
18 equity funds whose investments enhance the economic
19 development objectives of the state; provided such investments
20 offer a rate of return and safety comparable to other ~~[venture~~
21 ~~capital]~~ private equity investments currently available.

22 D. The state investment officer shall make
23 investments pursuant to this section only upon the approval of
24 the council and upon review of the recommendation of the
25 ~~[venture capital]~~ private equity investment advisory

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1 committee.

2 E. As used in this section:

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

8 ~~(2) "venture capital"~~

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

12 (3) "private equity fund" means a limited
13 partnership, limited liability company or corporation that:

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

19 (b) holds out prospects for capital
20 appreciation from such investments comparable to similar
21 investments made by other professionally managed ~~[venture~~
22 ~~capital]~~ private equity funds;

23 (c) has a minimum committed capital of
24 ~~[ten million dollars (\$10,000,000)]~~ fifteen million dollars
25 (\$15,000,000);

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

6 (e) has full-time management with at
7 least five years of experience in managing [~~venture capital~~]
8 private equity funds. "

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

11 "7-27-5.1. MARKET RATE INVESTMENTS. --

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

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

24 (2) bonds, notes, debentures and other
25 obligations issued by the state of New Mexico or a

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1 municipality or other political subdivision of the state that
2 are secured by an investment grade bond rating from a national
3 rating service, pledged revenue or other collateral or
4 insurance necessary to satisfy the standard of prudence set
5 forth in Section 6-8-10 NMSA 1978;

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

12 (4) bonds, notes, debentures, instruments,
13 conditional sales agreements, securities or other evidences of
14 indebtedness rated not less than BB or B or the national
15 association of insurance commissioners' equivalent by a
16 national rating service. An investment made under this
17 paragraph shall be in publicly traded debt issues with an
18 outstanding par value of at least one hundred million dollars
19 (\$100,000,000) and issued by a corporation, partnership or
20 trust listed on a national exchange and organized and
21 operating within the United States; provided that investments
22 made pursuant to this paragraph shall not exceed three percent
23 of the market value of the severance tax permanent fund,
24 calculated at the time of investment;

25 [~~4~~] (5) notes or obligations securing loans

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

8 [~~(5)~~] (6) common and preferred stocks and
9 convertible issues of any corporation; provided that it has
10 securities listed on one or more national stock exchanges or
11 included in a nationally recognized list of stocks; and
12 provided further that the fund shall not own more than five
13 percent of the voting stock of any company;

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

21 [~~(6)~~] (8) securities of non-United States
22 governmental, quasi-governmental, partnership, trust or
23 corporate entities, and these may be denominated in foreign
24 currencies; provided:

25 (a) aggregate non-United States

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1 investments shall not exceed fifteen percent of the book value
2 of the severance tax permanent fund;

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

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

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

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

19 [~~(7)~~] (9) stocks or shares of a diversified
20 investment company registered under the federal Investment
21 Company Act of 1940, as amended, and listed securities of
22 long-term unit investment trusts or individual, common or
23 collective trust funds of banks or trust companies that invest
24 primarily in equity securities authorized in Paragraphs [~~(5)~~
25 and] (6) and (8) of this subsection; provided that the

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

7 [~~(8)~~] (10) participation interests in New
8 Mexico real-property-related business loans. The actual
9 amount invested under this paragraph shall not exceed ten
10 percent of the severance tax permanent fund and shall be
11 included in any minimum amount of severance tax permanent fund
12 investments required to be placed in New Mexico certificates
13 of deposit. Investments authorized in this paragraph are
14 subject to the following:

15 (a) the state investment officer may
16 purchase from eligible institutions a participation interest
17 of up to eighty percent in any loan secured by a first
18 mortgage or a deed of trust on the real property located in
19 New Mexico of an eligible business entity, or its subsidiary,
20 that is operating or shall use loan proceeds to commence
21 operations within New Mexico plus any other guarantees or
22 collateral that may be judged by the eligible institution or
23 the state investment officer to be prudent. To be eligible
24 for investment the following minimum requirements shall be
25 met: 1) the loan proceeds shall be used exclusively for the

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1 purpose of expanding or establishing businesses in New Mexico,
2 including the refinancing of such businesses for expansion
3 purposes only. If a portion of the loan proceeds were used
4 for refinancing or repaying an existing loan and payment of
5 principal and interest to the state has not been made within
6 ninety days from the due date, unless extended pursuant to
7 agreement between the originating institution and the state
8 investment officer, the originating institution shall buy back
9 the state's participation interest in the loan and begin
10 foreclosure proceedings; 2) eligible business entities shall
11 not include public utilities or financial institutions or
12 shopping centers, apartment buildings or other such passive
13 investments; 3) the minimum loan amount shall be two hundred
14 fifty thousand dollars (\$250,000) and may be met by packaging
15 up to ten separate loans satisfying the requirements of this
16 paragraph. The maximum loan amount shall be two million
17 dollars (\$2,000,000); 4) the loan maturity shall be not less
18 than five years or more than thirty years; 5) the maximum
19 loan-to-value ratio shall be seventy-five percent and based on
20 current appraisal of the real property by an appraiser who is
21 licensed or certified in New Mexico and approved by the state
22 investment officer, which shall be made not more than one
23 hundred eighty days from the loan origination date; 6) the
24 interest rate of the loan shall be fixed for five years and
25 shall be adjusted at every fifth anniversary of the note to

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1 the rate specified in Item 7) of this subparagraph; 7) the
2 yield on the state's participation interest shall in no case
3 be less than the greater of the then-prevailing yield on
4 United States treasury securities of five-year maturity plus
5 two and one-half percent or the yield received by the lending
6 institution calculated exclusive of servicing fees; 8) if
7 payment of principal or interest has not been made within one
8 hundred eighty days from the due date, unless extended
9 pursuant to agreement between the originating institution and
10 the state investment officer, the originating institution
11 shall buy back the state's participation interest in the loan,
12 substitute another qualifying loan or begin foreclosure
13 proceedings; and 9) if foreclosure proceedings are commenced,
14 the state and the originating institution shall share in
15 proportion to their participation interest, as provided in
16 this subparagraph, in the legal and other foreclosure expenses
17 and in any loss incurred as a result of a foreclosure sale;

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

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

4 (d) the council shall adopt
5 regulations: 1) defining passive investments; 2) establishing
6 underwriting guidelines; 3) ensuring diversification across a
7 variety of types of collateral, types of businesses and
8 regions of the state; and 4) providing for the review by the
9 state investment officer of servicing and other fees that may
10 be charged by the eligible institution;

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

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

18 B. Not more than sixty-five percent of the book
19 value of the severance tax permanent fund shall be invested at
20 any given time in securities described in Paragraphs [~~(5)~~]
21 (6), (8) and [~~(7)~~] (9) of Subsection A of this section, and no
22 more than ten percent of the book value of the severance tax
23 permanent fund shall be invested at any given time in
24 securities described in Paragraph (3) of Subsection A of this
25 section that are rated Baa or BBB. Assets of the severance

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1 tax permanent fund may be combined for investment in common
2 pooled funds to effectuate efficient management.

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

6 Section 8. Section 7-27-5.6 NMSA 1978 (being Laws 1987,
7 Chapter 219, Section 2, as amended) is amended to read:

8 "7-27-5.6. [~~VENTURE CAPITAL~~] PRIVATE EQUITY
9 INVESTMENTS. --

10 A. The state investment officer may make
11 commitments to [~~venture capital~~] private equity funds to
12 invest up to [~~three~~] six percent of the market value of the
13 severance tax permanent fund in accordance with the provisions
14 of this section. If invested capital should at any time
15 exceed [~~three~~] six percent of the market value of the
16 severance tax permanent fund, no further commitments shall be
17 made until the invested capital is less than [~~three~~] six
18 percent of the market value of the severance tax permanent
19 fund.

20 B. Not more than ten percent of the amount
21 authorized for investment pursuant to Subsection A of this
22 section shall be invested in any one [~~venture capital~~] private
23 equity fund. The amount invested in any one [~~venture capital~~]
24 private equity fund shall not exceed twenty percent of the
25 committed capital of that fund.

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1 C. In making investments pursuant to this section,
2 the state investment officer and the council shall give
3 consideration to investments in [~~venture capital~~] private
4 equity funds whose investments enhance the economic
5 development objectives of the state, provided such investments
6 offer a rate of return and safety comparable to other [~~venture~~
7 ~~capital~~] private equity investments currently available.

8 D. The state investment officer shall make
9 investments pursuant to this section only upon approval of the
10 council and upon review of the recommendation of the [~~venture~~
11 ~~capital~~] private equity investment advisory committee.

12 E. As used in this section:

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

18 (2) ~~"venture capital"~~

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

22 (3) "private equity fund" means a limited
23 partnership, limited liability company or corporation that:

24 (a) has as its primary business
25 activity the investment of funds in return for equity in or

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1 debt of businesses for the purpose of providing capital for
2 start-up, expansion, new product development, recapitalization
3 or similar business purposes;

4 (b) holds out the prospects for capital
5 appreciation from such investments comparable to similar
6 investments made by other professionally managed [~~venture~~
7 ~~capital~~] private equity funds;

8 (c) has a minimum committed capital of
9 [~~ten million dollars (\$10,000,000)~~] fifteen million dollars
10 (\$15,000,000);

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

16 (e) has full-time management with at
17 least five years of experience in managing [~~venture capital~~]
18 private equity funds. "

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

21 "7-27-5.14. FINDINGS AND PURPOSE. --The legislature finds
22 that the health of the New Mexico economy is heavily dependent
23 on the establishment and expansion of small businesses and
24 that the lack of available [~~venture capital~~] private equity is
25 an impediment to the start-up and growth of businesses in the

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1 state. The legislature further finds that the
2 commercialization of technology conceived in the universities
3 and the federal scientific and engineering laboratories and
4 test facilities in the state is likely to occur elsewhere
5 unless sources of local ~~[venture capital]~~ private equity are
6 developed. The purpose of ~~[this act]~~ Section 7-27-5.15 NMSA
7 1978 is to provide a mechanism whereby the establishment of
8 locally managed ~~[venture capital]~~ private equity funds, whose
9 investment policies are supportive of the economic welfare of
10 New Mexico, will be stimulated. "

11 Section 10. Section 7-27-5.15 NMSA 1978 (being Laws
12 1990, Chapter 126, Section 5, as amended by Laws 2000, Chapter
13 76, Section 1 and also by Laws 2000, Chapter 97, Section 2) is
14 amended to read:

15 "7-27-5.15. NEW MEXICO ~~[VENTURE CAPITAL]~~ PRIVATE EQUITY
16 FUND AND SMALL BUSINESS INVESTMENTS. --

17 A. No more than three percent of the market value
18 of the severance tax permanent fund may be invested in New
19 Mexico ~~[venture capital]~~ private equity funds under this
20 section.

21 B. If an investment is made under Subsection A of
22 this section, not more than fifteen million dollars
23 (\$15,000,000) of the amount authorized for investment pursuant
24 to Subsection A of this section shall be invested in any one
25 New Mexico ~~[venture capital]~~ private equity fund. The amount

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1 invested in any one New Mexico ~~[venture capital]~~ private
2 equity fund shall not exceed fifty percent of the committed
3 capital of that fund.

4 C. In making investments pursuant to Subsection A
5 of this section, the council shall give consideration to
6 investments in New Mexico ~~[venture capital]~~ private equity
7 funds whose investments enhance the economic development
8 objectives of the state.

9 D. The state investment officer shall make
10 investments pursuant to Subsection A of this section only upon
11 approval of the council and upon review of the recommendation
12 of the ~~[venture capital]~~ private equity investment advisory
13 committee. The state investment officer is authorized to make
14 investments pursuant to Subsection A of this section
15 contingent upon a New Mexico ~~[venture capital]~~ private equity
16 fund securing paid-in investments from other accredited
17 investors for the balance of the minimum committed capital of
18 the fund.

19 E. As used in this section:

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

25 (2) "New Mexico ~~[venture capital]~~ private

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

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

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

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

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

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

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

6 F. The state investment officer shall make a
7 commitment to the small business investment corporation
8 pursuant to the Small Business Investment Act to invest one-
9 fourth of one percent of the market value of the severance tax
10 permanent fund by July 1, 2001 to create new job opportunities
11 by providing land, buildings or infrastructure for facilities
12 to support new or expanding businesses. If invested capital
13 in the small business investment corporation should at any
14 time fall below one-fourth of one percent of the market value
15 of the severance tax permanent fund, further commitments shall
16 be made until the invested capital is equal to one-fourth of
17 one percent of the market value of the fund. As used in this
18 subsection, "invested capital" means the original capital
19 contributed less any return of cost by the private equity
20 funds. "

21 Section 11. Section 7-27-5.23 NMSA 1978 (being Laws
22 1997, Chapter 45, Section 3) is amended to read:

23 "7-27-5.23. SHORT-TERM INVESTMENTS--REPURCHASE
24 AGREEMENTS AND SECURITIES LENDING.--

25 A. Money in or derived from the severance tax

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1 permanent fund made available for investment for a period of
2 less than one year may be invested in:

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

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

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

19 (2) securities-lending contracts for the
20 temporary exchange of state-owned securities for the use of
21 broker-dealers, banks or other recognized institutional
22 investors in securities, for periods not to exceed one year,
23 for a specified fee rate. No such contract shall be invested
24 in unless the contract is fully secured by exchange of an
25 irrevocable letter of credit running to the state, cash or

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1 equivalent collateral of at least one hundred two percent of
2 the market value of the securities plus accrued interest
3 temporarily exchanged. Such contracts may authorize the state
4 investment officer to invest cash collateral in instruments or
5 securities that are authorized investments for the funds and
6 may authorize payment of a fee from the funds, or from income
7 generated by the investment of cash collateral, to the
8 borrower of securities providing cash as collateral. The
9 state investment officer may enter into a contract that
10 apportions income derived from the investment of cash to pay
11 its agent in securities-lending transactions;

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

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

17 (5) funding agreements rated at least AA by
18 at least two nationally recognized rating agencies. As used
19 in this paragraph, "funding agreement" means a floating or
20 variable rate insurance company contract that is a general
21 obligation of an insurance company organized and operating
22 within the United States and that is senior to all other debt
23 issued by the company; and

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

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1 by banks incorporated in the United States, that are rated A1
2 or P1 by a nationally recognized rating agency.

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

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

16 Section 12. Section 7-27-5.26 NMSA 1978 (being Laws 2000
17 (2nd S.S.), Chapter 6, Section 2) is amended to read:

18 "7-27-5.26. INVESTMENT IN FILMS TO BE PRODUCED IN NEW
19 MEXICO. --

20 A. No more than one-half of one percent of the
21 market value of the severance tax permanent fund may be
22 invested in New Mexico film [~~venture capital~~] private equity
23 funds under this section.

24 B. If an investment is made under this section,
25 not more than seven million five hundred thousand dollars

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1 (\$7,500,000) of the amount authorized for investment pursuant
2 to Subsection A of this section shall be invested in any one
3 New Mexico film [~~venture capital~~] private equity fund.

4 C. The state investment officer shall make
5 investments pursuant to this section only upon approval of the
6 state investment council after a review by the [~~venture~~
7 ~~capital~~] private equity investment advisory committee and the
8 New Mexico film division of the economic development
9 department. The state investment officer may make an
10 investment pursuant to this section only in a New Mexico film
11 [~~venture capital~~] private equity fund that invests only in
12 film projects that:

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

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

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

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

23 (5) have posted a completion bond that has
24 been approved by the New Mexico film division.

25 D. As used in this section:

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

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

14 (3) "New Mexico film [~~venture capital~~]
15 private equity fund" means any limited partnership, limited
16 liability company or corporation organized and operating in
17 the United States that:

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

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

23 (c) accepts investments only from
24 accredited investors as that term is defined in Section 2 of
25 the federal Securities Act of 1933, as amended, and rules

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1 promulgated pursuant to that section."

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