

1 SENATE BILL 533

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Jacob R. Candelaria

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10 AN ACT

11 RELATING TO PUBLIC FINANCES; REQUIRING AT LEAST FIVE PERCENT OF  
12 THE VALUE OF THE CASH HOLDINGS OF THE SEVERANCE TAX PERMANENT  
13 FUND TO BE INVESTED IN DEPOSITS IN NEW MEXICO CREDIT UNIONS,  
14 BANKS AND SAVINGS AND LOAN INSTITUTIONS.

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. Section 7-27-5.19 NMSA 1978 (being Laws 1993,  
18 Chapter 267, Section 2, as amended) is amended to read:

19 "7-27-5.19. DEPOSITS IN NEW MEXICO FINANCIAL  
20 INSTITUTIONS--LIMITATIONS.--

21 A. At least five percent of the value of the cash  
22 holdings but no more than twenty percent of the book value of  
23 the severance tax permanent fund may be invested in deposits in  
24 New Mexico financial institutions and New Mexico credit unions  
25 under terms and conditions set by the council in accordance

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1 with the provisions of this section.

2 B. To be eligible for deposits under this section,  
3 a financial institution's loans and investments shall equal in  
4 the aggregate at least one hundred thousand dollars (\$100,000).  
5 If eligible, a financial institution may qualify for deposits  
6 as follows:

7 (1) a financial institution may qualify for  
8 deposits in an amount equal to new loans and investments made  
9 by that financial institution after July 1, 1993;

10 (2) the financial institution shall provide  
11 the state investment officer with the necessary documentation  
12 and information for each new loan or investment and the state  
13 investment officer shall verify that each such loan or  
14 investment meets the requirements of this section and the  
15 regulations, guidelines and investment policies adopted  
16 pursuant to this section; and

17 (3) in any calendar year, the state investment  
18 officer may increase the deposits in any financial institution  
19 only to the extent new loans and investments made by the  
20 financial institution have increased over the same period of  
21 the prior year.

22 C. Notwithstanding any other collateral, interest  
23 rate or other provisions of law to the contrary governing  
24 deposit of public money in Chapter 6, Article 10 NMSA 1978,  
25 deposits of the severance tax permanent fund made pursuant to

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1 Subsections A and B of this section shall be governed by the  
2 regulations, guidelines and investment policies established by  
3 the council and shall not be made until such regulations,  
4 guidelines and policies are adopted. Those policies shall  
5 provide:

6 (1) the terms and conditions for pledging of  
7 collateral security and the amount and kind of collateral  
8 security to be pledged; provided:

9 (a) no collateral shall be required for  
10 deposits of financial institutions rated "A" by the council  
11 pursuant to its risk assessment analysis, unless the council in  
12 its sole discretion deems it necessary to protect the severance  
13 tax permanent fund;

14 (b) financial institutions not rated "A"  
15 by the council shall secure each severance tax permanent fund  
16 deposit with security having an aggregate value equal to  
17 seventy-five percent of the amount of money deposited by that  
18 institution or any greater percentage determined by the council  
19 in its sole discretion to be necessary to protect the severance  
20 tax permanent fund;

21 (c) secured deposits shall be secured  
22 by: 1) securities of the United States or its agencies or  
23 instrumentalities, the state or its agencies or  
24 instrumentalities or political subdivisions of the state; 2)  
25 securities guaranteed by agencies or instrumentalities of the

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1 United States; or 3) New Mexico residential mortgages;

2 (d) to be rated "A" by the council, a  
3 bank shall at a minimum have: 1) primary capital at least  
4 equal to six percent of assets; 2) net income after taxes at  
5 least equal to sixty-one hundredths of one percent of the  
6 average assets of the bank for the current quarter and for each  
7 of the three previous quarters; and 3) an aggregate amount of  
8 nonperforming loans, defined as loans that are at least ninety  
9 days past due, that does not exceed thirty-four and nine-tenths  
10 percent of primary capital; provided the council in its sole  
11 discretion may increase any of the requirements of this  
12 paragraph to protect the severance tax permanent fund; and

13 (e) to be rated "A" by the council, a  
14 savings and loan association shall have a regulatory net worth  
15 equal to at least three percent of total assets and net income  
16 after taxes equal to at least thirty hundredths of one percent  
17 of average assets for the current quarter and for each of the  
18 previous three quarters; provided the council may increase  
19 these requirements or add additional criteria for nonperforming  
20 loans as a percentage of primary capital or net worth that are  
21 similar to the criteria for banks, as necessary to conform to  
22 changing applicable federal regulatory requirements or to  
23 protect the severance tax permanent fund;

24 (2) the rate at which severance tax permanent  
25 fund deposits shall bear interest, payable monthly, which shall

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1 be at a fixed market rate determined by the council, but in no  
2 event shall the rate of interest paid be less than the yield  
3 available on comparable maturities of obligations of the United  
4 States government, its agencies or instrumentalities or  
5 obligations guaranteed by the United States government, its  
6 agencies or instrumentalities, whichever is higher;

7 (3) the terms of maturity, renewal or  
8 withdrawal; provided that in no event shall the maturity exceed  
9 eight years and the council may withdraw any deposit before  
10 maturity without penalty if more than seventy-five percent  
11 collateral is required by the rules and regulations adopted by  
12 the council; and

13 (4) such other terms, including the financial  
14 condition of the financial institution, as the council deems  
15 prudent to protect the severance tax permanent fund and to  
16 implement efficiently and effectively the deposit program.

17 D. In making deposits in New Mexico financial  
18 institutions and New Mexico credit unions pursuant to this  
19 section, the state investment officer shall not deposit from  
20 the severance tax permanent fund an amount that exceeds two  
21 hundred percent of the total equity capital in the case of  
22 banks or two hundred percent of the net worth in the case of  
23 savings and loan associations or ten percent of the total of  
24 [~~that~~] a bank's or [~~the~~] a savings and loan association's or a  
25 credit union's deposits, whichever is less. These limits shall

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1 be based on the most recently published statement of financial  
2 condition required by federal or state financial authorities as  
3 certified by an authorized officer of the financial institution  
4 or credit union unless the council has more current reliable  
5 information from the financial institution. In the event a  
6 financial institution exceeds the limitations set forth in this  
7 subsection, the state investment officer may withdraw without  
8 penalty the deposits that exceed that limitation. The maximum  
9 funds on deposit or the deposit limit in this subsection shall  
10 not apply to the state fiscal agent bank as to the funds held  
11 by the fiscal agent bank or demand deposits held by a state  
12 checking depository bank approved by the state board of finance  
13 in accordance with the provisions of Section 6-10-35 NMSA 1978.

14 E. As used in this section:

15 (1) "credit union" means a nonprofit member-  
16 owned financial cooperative that is chartered in New Mexico  
17 only and is qualified as an insured public depository;

18 [~~(1)~~] (2) "financial institution" means a [~~New~~  
19 ~~Mexico~~] bank [~~a branch of a bank doing business in New Mexico~~]  
20 or a savings and loan association that is chartered in New  
21 Mexico only and is qualified as an insured public depository;

22 [~~(2)~~] (3) "investment" means a New Mexico  
23 municipal bond or a New Mexico industrial revenue bond; and

24 [~~(3)~~] (4) "loan" means a loan of any term  
25 that is secured or unsecured and is made for business

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1 purposes. "Loan" does not include a loan that is a renewal  
2 or restructuring of a loan existing on or before July 1,  
3 1993, a loan of more than three million dollars (\$3,000,000)  
4 to one borrower, a student loan, a consumer loan or a loan to  
5 purchase or provide permanent financing on a personal  
6 residence, but does include a loan that is made to "persons  
7 of low or moderate income" as that term is defined in the  
8 Mortgage Finance Authority Act, is secured by real estate and  
9 is held and serviced by the original lending financial  
10 institution in New Mexico. For purposes of this paragraph,  
11 "business" includes [~~but is not limited to~~] manufacturing;  
12 construction; transportation; communications; publishing;  
13 wholesale or retail business; restaurants; entertainment;  
14 architectural, engineering and other professional services;  
15 medical and health services; food processing; farming or  
16 ranching; mining and natural resource exploration and  
17 development; and research and technology development."

18 SECTION 2. Section 7-27-5.20 NMSA 1978 (being Laws  
19 1993, Chapter 267, Section 3) is amended to read:

20 "7-27-5.20. DEPOSITS IN NEW MEXICO CREDIT UNIONS.--The  
21 severance tax permanent fund [~~may~~] shall be invested in  
22 deposits in New Mexico credit unions pursuant to the  
23 provisions of Section 7-27-5.19 NMSA 1978; provided each  
24 deposit is insured by an agency of the United States and the  
25 credit union offers interest on such deposits at least equal

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1 to that offered to its members for similar deposits. Such  
2 deposits may be invested for a term of maturity of eight  
3 years or less at an interest rate to be set by the council.  
4 Such deposits shall be made and administered by the council  
5 and state investment officer in accordance with the law  
6 governing deposits of public money, including ~~but not~~  
7 ~~limited to~~ Sections 6-10-10, 6-10-16, 6-10-24.1 and 6-10-29  
8 NMSA 1978. As used in this section, "deposit" includes  
9 share, share certificate and share draft."

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