

AN ACT
RELATING TO EDUCATIONAL RETIREMENT; AMENDING A CERTAIN
SECTION OF THE EDUCATIONAL RETIREMENT ACT PERTAINING TO
INVESTMENT OF THE EDUCATIONAL RETIREMENT FUND.

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

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

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

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

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

(2) obligations, including but not limited to bills, bonds and notes of governments other than the United States or their political subdivisions, agencies or instrumentalities, and these may be denominated in foreign currencies;

(3) obligations, including but not limited to bonds or notes of a municipality or political subdivision of the state that were issued pursuant to law; provided the issuer has not, within ten years prior to making the

investment, been in default for more than three months in the payment of any part of the principal or interest on any debt evidenced by its bonds, notes or obligations; and provided the bonds are city or county utility, or utility-district revenue bonds with the revenue of such utility, other than for payment of operation and maintenance expenses, pledged wholly to payment of the interest on and the principal of such indebtedness, and the utility project has been completely self-supporting for a period of five years preceding the date of the investment;

(4) 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 board. No such contract shall be entered into unless the contract is fully secured by obligations of the United States, or other securities backed by the United States, having a market value of at least one hundred two percent of the amount of the contract. The collateral required in this section shall be delivered to the state fiscal agent or his 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. No such contract shall be entered into unless the contracting bank, brokerage firm or recognized institutional investor has a net worth in excess of five

hundred million dollars (\$500,000,000);

(5) obligations, including but not limited to bonds, notes, debentures, instruments, conditional sales agreements, securities or other evidence of indebtedness of any corporation, partnership or trust organized within the United States; preferred stock or common stock or any security convertible to common stock of any corporation, partnership or trust organized within the United States whose securities are listed on at least one national stock exchange or on the N. A. S. D. national market or American depositary receipts of any corporation organized outside the United States whose securities are listed on at least one national stock exchange or on the N. A. S. D. national market; provided that the fund shall not at any one time own more than ten percent of the voting stock of a company;

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

(7) obligations, including but not limited to bonds, notes, debentures, instruments, conditional sales agreements, securities or other evidence of indebtedness of any corporation, partnership or trust organized outside of the United States, and these may be denominated in foreign currencies; preferred stock or common stock or any security convertible to common stock of any corporation, partnership or trust organized outside of the United States whose securities are listed on at least one national or foreign

stock exchange, and these may be denominated in foreign currencies; provided that the fund shall not at any one time own more than ten percent of the voting stock of a company;

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

(9) stocks or shares of a diversified investment company registered under the Investment Company Act of 1940, as amended, which invests primarily in United States or non-United States fixed income securities, equity securities or short-term debt instruments pursuant to Paragraphs (1), (2), (4), (5) and (7) of this subsection, provided that the investment company has total assets under management of at least one hundred million dollars (\$100,000,000); individual, common or collective trust funds of banks or trust companies, which invest primarily in United States or non-United States fixed income securities, equity securities or short-term debt instruments pursuant to Paragraphs (1), (2), (4), (5) and (7) of this subsection, provided that the investment manager has assets under management of at least one hundred million dollars (\$100,000,000); the board may allow reasonable administrative and investment expenses to be paid directly from the income or assets of these investments; or

(10) industrial revenue bonds issued pursuant to the Industrial Revenue Bond Act, where both the principal and interest of the bonds are fully and unconditionally guaranteed by a lease agreement executed by a corporation organized and operating within the United States and has issued securities traded on one or more national stock exchanges and where the senior securities of the guaranteeing corporation would have the equivalent of a BAA rating.

B. The board or its designated agent may enter into contracts for the temporary exchange of securities for the use by broker-dealers, banks or other recognized institutional investors, for periods not to exceed one year, for a specified fee or consideration. No such contract shall be entered into unless the contract is fully secured by a collateralized, irrevocable letter of credit running to the board, cash or equivalent collateral of at least one hundred two percent of the market value of the securities plus accrued interest temporarily exchanged. This collateral shall be delivered to the state fiscal agent or its designee contemporaneously with the transfer of funds or delivery of the securities. Such contract may authorize the board to invest cash collateral in instruments or securities that are authorized fund investments and may authorize payment of a fee from the fund or from income generated by the investment of cash collateral to the borrower of

securities providing cash as collateral. The board may apportion income derived from the investment of cash collateral to pay its agent in securities lending transactions.

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

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

E. Securities purchased for the fund shall be held in the custody of the state treasurer. At the direction of the board, the state treasurer shall deposit with a bank or trust company the securities for safekeeping or servicing.

F. The board may consult with the state investment council or the state investment officer; may request from the state investment council or the state investment officer any information, advice or recommendations with respect to investment of the fund; may

utilize the services of the state investment council or the state investment officer; and may act upon any advice or recommendations of the state investment council or the state investment officer. The state investment council or the state investment officer shall render investment advisory services to the board upon request and without expense to the board. The board may employ investment advisory services and pay reasonable compensation from the fund for the services. The board may also employ investment management services and pay reasonable compensation from the fund for the services to make investment decisions on behalf of the board, within the investment objectives, policies and operating guidelines as directed by the board to the investment manager.

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

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