

HOUSE APPROPRIATIONS AND FINANCE COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 209

**46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004**

AN ACT

RELATING TO THE INVESTMENT OF PUBLIC MONEY; INCREASING THE  
PERCENTAGE OF THE SEVERANCE TAX PERMANENT FUND THAT MAY BE  
INVESTED IN REAL ESTATE; EXPANDING THE TYPE OF ALLOWABLE REAL  
ESTATE INVESTMENTS; ALLOWING, UNDER CERTAIN CIRCUMSTANCES, THE  
SEVERANCE TAX PERMANENT FUND TO BE INVESTED IN HEDGE FUNDS.

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

Section 1. 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

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

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

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

20 (4) bonds, notes, debentures, instruments,  
21 conditional sales agreements, securities or other evidences of  
22 indebtedness rated not less than BB or B or the national  
23 association of insurance commissioners' equivalent by a  
24 national rating service. An investment made under this  
25 paragraph shall be in publicly traded debt issues with an

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1 outstanding par value of at least one hundred million dollars  
2 (\$100,000,000) and issued by a corporation, partnership or  
3 trust listed on a national exchange and organized and operating  
4 within the United States; provided that investments made  
5 pursuant to this paragraph shall not exceed three percent of  
6 the market value of the severance tax permanent fund,  
7 calculated at the time of investment;

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

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

22 (7) real estate investments, including real  
23 property and undivided interests in real property, debt  
24 instruments secured by [~~first~~] liens on real property, or  
25 limited partnership interests; provided that the total value of

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1 investments made under this paragraph shall not exceed [~~three~~  
2 ten percent of the market value of the severance tax permanent  
3 fund, calculated at the time of investment;

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

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

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

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

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

22 (e) reasonable compensation for  
23 investment management services and other administrative and  
24 investment expenses related to these investments shall be paid  
25 directly from the assets of the fund, subject to budgeting and

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1 appropriation by the legislature;

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

14 [~~and~~]

15 (10) participation interests in New Mexico  
16 real-property-related business loans. The actual amount  
17 invested under this paragraph shall not exceed ten percent of  
18 the severance tax permanent fund and shall be included in any  
19 minimum amount of severance tax permanent fund investments  
20 required to be placed in New Mexico certificates of deposit.  
21 Investments authorized in this paragraph are subject to the  
22 following:

23 (a) the state investment officer may  
24 purchase from eligible institutions a participation interest of  
25 up to eighty percent in any loan secured by a first mortgage or

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1 a deed of trust on the real property located in New Mexico of  
2 an eligible business entity, or its subsidiary, that is  
3 operating or shall use loan proceeds to commence operations  
4 within New Mexico plus any other guarantees or collateral that  
5 may be judged by the eligible institution or the state  
6 investment officer to be prudent. To be eligible for  
7 investment the following minimum requirements shall be met: 1)  
8 the loan proceeds shall be used exclusively for the purpose of  
9 expanding or establishing businesses in New Mexico, including  
10 the refinancing of such businesses for expansion purposes only.  
11 If a portion of the loan proceeds were used for refinancing or  
12 repaying an existing loan and payment of principal and interest  
13 to the state has not been made within ninety days from the due  
14 date, unless extended pursuant to agreement between the  
15 originating institution and the state investment officer, the  
16 originating institution shall buy back the state's  
17 participation interest in the loan and begin foreclosure  
18 proceedings; 2) eligible business entities shall not include  
19 public utilities or financial institutions or shopping centers,  
20 apartment buildings or other such passive investments; 3) the  
21 minimum loan amount shall be two hundred fifty thousand dollars  
22 (\$250,000) and may be met by packaging up to ten separate loans  
23 satisfying the requirements of this paragraph. The maximum  
24 loan amount shall be two million dollars (\$2,000,000); 4) the  
25 loan maturity shall be not less than five years or more than

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1 thirty years; 5) the maximum loan-to-value ratio shall be  
2 seventy-five percent and based on current appraisal of the real  
3 property by an appraiser who is licensed or certified in New  
4 Mexico and approved by the state investment officer, which  
5 shall be made not more than one hundred eighty days from the  
6 loan origination date; 6) the interest rate of the loan shall  
7 be fixed for five years and shall be adjusted at every fifth  
8 anniversary of the note to the rate specified in Item 7) of  
9 this subparagraph; 7) the yield on the state's participation  
10 interest shall in no case be less than the greater of the then-  
11 prevailing yield on United States treasury securities of five-  
12 year maturity plus two and one-half percent or the yield  
13 received by the lending institution calculated exclusive of  
14 servicing fees; 8) if payment of principal or interest has not  
15 been made within one hundred eighty days from the due date,  
16 unless extended pursuant to agreement between the originating  
17 institution and the state investment officer, the originating  
18 institution shall buy back the state's participation interest  
19 in the loan, substitute another qualifying loan or begin  
20 foreclosure proceedings; and 9) if foreclosure proceedings are  
21 commenced, the state and the originating institution shall  
22 share in proportion to their participation interest, as  
23 provided in this subparagraph, in the legal and other  
24 foreclosure expenses and in any loss incurred as a result of a  
25 foreclosure sale;

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

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

12 (d) the council shall adopt regulations:  
13 1) defining passive investments; 2) establishing underwriting  
14 guidelines; 3) ensuring diversification across a variety of  
15 types of collateral, types of businesses and regions of the  
16 state; and 4) providing for the review by the state investment  
17 officer of servicing and other fees that may be charged by the  
18 eligible institution;

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

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

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1                   (11) hedge funds that invest primarily in  
 2 publicly traded securities and derivatives and use long and  
 3 short positions and leverage to reduce market exposure in order  
 4 to profit from security selection; provided that:

5                   (a) the hedge fund advisors shall be  
 6 registered under the federal Investment Company Act of 1940;

7                   (b) the hedge fund advisors: 1) provide  
 8 audited financial statements to the state investment officer;  
 9 2) agree to provide regular reports detailing underlying fund  
 10 investment holdings and transactions to the state investment  
 11 officer and a third-party risk assessment firm designated by  
 12 the state investment officer; 3) possess a three-year  
 13 performance record that has been reviewed by the state  
 14 investment officer; and 4) manage a minimum of one hundred  
 15 million dollars (\$100,000,000) of investments in the investment  
 16 strategy to be used for the investment made pursuant to this  
 17 paragraph; and

18                   (c) investments made pursuant to this  
 19 paragraph shall not exceed ten percent of the market value of  
 20 the severance tax permanent fund, calculated at the time of  
 21 investment.

22                   B. Not more than sixty-five percent of the book  
 23 value of the severance tax permanent fund shall be invested at  
 24 any given time in:

25                   (1) securities described in Paragraphs (6),

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1 (8) and (9) of Subsection A of this section; and

2 (2) investments described in Paragraph (11) of  
3 Subsection A of this section in which the underlying asset or  
4 asset class is a security described in Paragraph (6), (8) or  
5 (9) of Subsection A of this section.

6 C. No more than ten percent of the book value of  
7 the severance tax permanent fund shall be invested at any given  
8 time in securities described in Paragraph (3) of Subsection A  
9 of this section that are rated Baa or BBB.

10 D. Assets of the severance tax permanent fund may  
11 be combined for investment in common pooled funds to effectuate  
12 efficient management.

13 [~~C.~~] E. Commissions paid for the purchase and sale  
14 of any security shall not exceed brokerage rates prescribed and  
15 approved by national stock exchanges or by industry practice."

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