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AN ACT

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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 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

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

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

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

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

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

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

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

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

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

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

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

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

22 (9) stocks or shares of a diversified investment company  
23 registered under the federal Investment Company Act of 1940, as amended, and  
24 listed securities of long-term unit investment trusts or individual, common or  
25 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

1 million dollars (\$100,000,000); and provided further that the council may allow  
2 reasonable administrative and investment expenses to be paid directly from the  
3 assets derived from these investments, subject to budgeting and appropriation by  
4 the legislature;

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

11  
12 (a) the state investment officer may purchase from  
13 eligible institutions a participation interest of up to eighty percent in any loan  
14 secured by a first mortgage or a deed of trust on the real property located in New  
15 Mexico of an eligible business entity, or its subsidiary, that is operating or shall use  
16 loan proceeds to commence operations within New Mexico plus any other  
17 guarantees or collateral that may be judged by the eligible institution or the state  
18 investment officer to be prudent. To be eligible for investment the following  
19 minimum requirements shall be met: 1) the loan proceeds shall be used exclusively  
20 for the purpose of expanding or establishing businesses in New Mexico, including  
21 the refinancing of such businesses for expansion purposes only. If a portion of the  
22 loan proceeds were used for refinancing or repaying an existing loan and payment  
23 of principal and interest to the state has not been made within ninety days from the  
24 due date, unless extended pursuant to agreement between the originating  
25 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

1 shopping centers, apartment buildings or other such passive investments; 3) the  
2 minimum loan amount shall be two hundred fifty thousand dollars (\$250,000) and  
3 may be met by packaging up to ten separate loans satisfying the requirements of  
4 this paragraph. The maximum loan amount shall be two million dollars  
5 (\$2,000,000); 4) the loan maturity shall be not less than five years or more than  
6 thirty years; 5) the maximum loan-to-value ratio shall be seventy-five percent and  
7 based on current appraisal of the real property by an appraiser who is licensed or  
8 certified in New Mexico and approved by the state investment officer, which shall be  
9 made not more than one hundred eighty days from the loan origination date; 6) the  
10 interest rate of the loan shall be fixed for five years and shall be adjusted at every  
11 fifth anniversary of the note to the rate specified in Item 7) of this subparagraph;  
12 7) the yield on the state's participation interest shall in no case be less than the  
13 greater of the then-prevailing yield on United States treasury securities of five-year  
14 maturity plus two and  
15 one-half percent or the yield received by the lending institution calculated exclusive  
16 of servicing fees; 8) if payment of principal or interest has not been made within one  
17 hundred eighty days from the due date, unless extended pursuant to agreement  
18 between the originating institution and the state investment officer, the originating  
19 institution shall buy back the state's participation interest in the loan, substitute  
20 another qualifying loan or begin foreclosure proceedings; and 9) if foreclosure  
21 proceedings are commenced, the state and the originating institution shall share in  
22 proportion to their participation interest, as provided in this subparagraph, in the  
23 legal and other foreclosure expenses and in any loss incurred as a result of a  
24 foreclosure sale;

25 (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

1 participation agreement shall provide that the originating institution shall not assign  
2 its interest in any loan covered by the agreement without the prior written consent of  
3 the state investment officer;

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

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

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

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

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

19 (a) the hedge fund advisors shall be registered under  
20 the federal Investment Company Act of 1940; and

21 (b) the hedge fund advisors: 1) provide audited  
22 financial statements to the state investment officer; 2) agree to provide regular  
23 reports detailing underlying fund investment holdings and transactions to the state  
24 investment officer and a third party risk assessment firm designated by the state  
25 investment officer; 3) possess a three-year performance record that has been  
reviewed by the state investment officer; and 4) manage a minimum of one hundred  
million dollars (\$100,000,000) of investments in the investment strategy to be used

1 for the investment made pursuant to this paragraph;  
2 (c) investments made pursuant to this paragraph  
3 shall not exceed ten percent of the market value of the severance tax permanent  
4 fund, calculated at the time of investment.

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

7 (1) securities described in Paragraphs (6), (8) and (9) of  
8 Subsection A of this section; and

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

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

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

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

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