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HOUSE BILL 388

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Luciano "Lucky" Varela

FOR THE STATE PERMANENT FUND TASK FORCE

AN ACT

RELATING TO PUBLIC FINANCES; BROADENING THE SCOPE OF FINANCIAL INSTITUTIONS THAT MAY SERVE AS SECURITIES LENDERS OR THAT MAY PERFORM CUSTODIAL FUNCTIONS FOR PUBLIC FUNDS.

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

Section 1. Section 6-10-10 NMSA 1978 (being Laws 1933, Chapter 175, Section 4, as amended) is amended to read:

"6-10-10. DEPOSIT AND INVESTMENT OF FUNDS.--

A. Upon the certification or designation of a bank, savings and loan association or credit union whose deposits are insured by an agency of the United States to receive public money on deposit, the state treasurer and county or municipal treasurers who have on hand any public money by virtue of their offices shall make deposit of that money in banks and savings and loan associations, and may make deposit of that money in

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1 credit unions whose deposits are insured by an agency of the
2 United States, designated by the authority authorized by law to
3 so designate to receive the deposits of all money thereafter
4 received or collected by the treasurers.

5 B. County or municipal treasurers may deposit money
6 in one or more accounts with any such bank, savings and loan
7 association or credit union located in their respective
8 counties, subject to limitation on credit union accounts.

9 C. The state treasurer may deposit money in one or
10 more accounts with any such bank, savings and loan association
11 or credit union, subject to the limitation on credit union
12 accounts.

13 D. Duplicate receipts or deposit slips shall be
14 taken for each deposit made pursuant to Subsection A, B or C of
15 this section. When deposits are made by the state treasurer,
16 one copy of the receipt or deposit slip shall be retained by
17 the state treasurer and the other copy shall be filed monthly
18 on the first day of each month with the financial control
19 division of the department of finance and administration. When
20 deposits are made by the treasurer or any other authorized
21 person making the deposits for a board of finance of a public
22 or educational institution, one copy of the receipt or deposit
23 slip shall be retained by the treasurer or authorized person
24 making the deposit and the other copy shall be filed monthly on
25 the first day of each month with that board of finance. When

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1 deposits are made by a county or municipal treasurer, one of
2 the duplicate receipts or deposit slips shall be retained by
3 the treasurer making the deposit and the other copy shall be
4 filed monthly on the first day of each month with the secretary
5 of the board of finance of the county or municipality for which
6 that treasurer is acting.

7 E. "Deposit", as used in this section, means either
8 investment or deposit and includes share, share certificate and
9 share draft.

10 F. County or municipal treasurers, with the advice
11 and consent of their respective boards of finance charged with
12 the supervision and control of the respective funds, have the
13 power to invest all sinking funds or money remaining unexpended
14 from the proceeds of any issue of bonds or other negotiable
15 securities of any county, municipality or school district that
16 is entrusted to their care and custody and all money not
17 immediately necessary for the public uses of the counties,
18 municipalities or school districts not invested or deposited in
19 banks, savings and loan associations or credit unions in:

20 (1) bonds or negotiable securities of the
21 United States, the state or a county, municipality or school
22 district that has a taxable valuation of real property for the
23 last preceding year of at least one million dollars
24 (\$1,000,000) and has not defaulted in the payment of any
25 interest or sinking fund obligation or failed to meet any bonds

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1 at maturity at any time within five years last preceding; or
2 (2) securities that are issued by the United
3 States government or by its agencies or instrumentalities and
4 that are either direct obligations of the United States, the
5 federal home loan mortgage association, the federal national
6 mortgage association, the federal farm credit bank or the
7 student loan marketing association or are backed by the full
8 faith and credit of the United States government.

9 G. The treasurer of a class A county or the
10 treasurer of a municipality having a population of more than
11 sixty-five thousand according to the most recent federal
12 decennial census and located within a class A county, with the
13 advice and consent of the boards of finance charged with the
14 supervision and control of the funds, has the power to invest
15 all sinking funds or money remaining unexpended from the
16 proceeds of any issue of bonds or other negotiable securities
17 of the county or municipality that is entrusted to ~~his~~ the
18 treasurer's care and custody and all money not immediately
19 necessary for the public uses of the county or municipality not
20 invested or deposited in banks, savings and loan associations
21 or credit unions in:

22 (1) shares of a diversified investment company
23 registered pursuant to the federal Investment Company Act of
24 1940 that invests in fixed income securities or debt
25 instruments that are listed in a nationally recognized, broad-

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1 market, fixed-income-securities market index; provided that the
2 investment company or manager has total assets under management
3 of at least one hundred million dollars (\$100,000,000) and
4 provided that the board of finance of the county or
5 municipality may allow reasonable administrative and investment
6 expenses to be paid directly from the income or assets of these
7 investments;

8 (2) individual, common or collective trust
9 funds of banks or trust companies that invest in fixed income
10 securities or debt instruments that are listed in a nationally
11 recognized, broad-market, fixed-income-securities market index;
12 provided that the investment company or manager has total
13 assets under management of at least one hundred million dollars
14 (\$100,000,000) and provided that the board of finance of the
15 county or municipality may allow reasonable administrative and
16 investment expenses to be paid directly from the income or
17 assets of these investments; or

18 (3) shares of pooled investment funds managed
19 by the state investment officer, as provided in Subsection G of
20 Section 6-8-7 NMSA 1978; provided that the board of finance of
21 the county or municipality may allow reasonable administrative
22 and investment expenses to be paid directly from the income or
23 assets of these investments.

24 H. A local public body, with the advice and consent
25 of the body charged with the supervision and control of the

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1 local public body's respective funds, has the power to invest
2 all sinking funds or money remaining unexpended from the
3 proceeds of any issue of bonds or other negotiable securities
4 of the investor that is entrusted to the local public body's
5 care and custody and all money not immediately necessary for
6 the public uses of the investor and not otherwise invested or
7 deposited in banks, savings and loan associations or credit
8 unions in contracts with banks, savings and loan associations
9 or credit unions for the present purchase and resale at a
10 specified time in the future of specific securities at
11 specified prices at a price differential representing the
12 interest income to be earned by the investor. The contract
13 shall be fully secured by obligations of the United States or
14 other securities backed by the United States having a market
15 value of at least one hundred two percent of the contract. The
16 collateral required for investment in the contracts provided
17 for in this subsection shall be shown on the books of the
18 financial institution as being the property of the investor and
19 the designation shall be contemporaneous with the investment.
20 As used in this subsection, "local public body" includes all
21 political subdivisions of the state and agencies,
22 instrumentalities and institutions thereof; provided that home
23 rule municipalities that prior to July 1, 1994 had enacted
24 ordinances authorizing the investment of repurchase agreements
25 may continue investment in repurchase agreements pursuant to

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1 those ordinances.

2 I. The state treasurer, with the advice and consent
3 of the state board of finance, has the power to invest money
4 held in demand deposits and not immediately needed for the
5 operation of state government and money held in the short-term
6 investment fund, except as provided in Section 6-10-10.1 NMSA
7 1978. The investments shall be made only in securities that
8 are issued by the United States government or by its
9 departments or agencies and are either direct obligations of
10 the United States or are backed by the full faith and credit of
11 the United States government or agencies sponsored by the
12 United States government.

13 J. The state treasurer, with the advice and consent
14 of the state board of finance, may also invest in contracts for
15 the present purchase and resale at a specified time in the
16 future, not to exceed one year or, in the case of bond
17 proceeds, not to exceed three years, of specific securities at
18 specified prices at a price differential representing the
19 interest income to be earned by the state. [~~No~~] Such contract
20 shall not be invested in unless the contract is fully secured
21 by obligations of the United States or other securities backed
22 by the United States having a market value of at least one
23 hundred two percent of the amount of the contract.

24 K. The state treasurer, with the advice and consent
25 of the state board of finance, may also invest in contracts for

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1 the temporary exchange of state-owned securities for the use of
2 broker-dealers, banks or other recognized institutional
3 investors in securities, for periods not to exceed one year for
4 a specified fee rate. [~~No~~] Such contract shall not be invested
5 in unless the contract is fully secured by exchange of an
6 irrevocable letter of credit running to the state, cash or
7 equivalent collateral of at least one hundred two percent of
8 the market value of the securities plus accrued interest
9 temporarily exchanged.

10 L. The collateral required for either of the forms
11 of investment in Subsection J or K of this section shall be
12 delivered to the fiscal agent of New Mexico or its designee
13 contemporaneously with the transfer of funds or delivery of the
14 securities at the earliest time industry practice permits, but
15 in all cases, settlement shall be on a same-day basis.

16 M. Neither of the contracts in Subsection J or K of
17 this section shall be invested in unless the contracting bank,
18 brokerage firm or recognized institutional investor has a net
19 worth in excess of five hundred million dollars (\$500,000,000).

20 N. The state treasurer, with the advice and consent
21 of the state board of finance, may also invest in any of the
22 following investments in an amount not to exceed forty percent
23 of any fund that the state treasurer invests:

24 (1) commercial paper rated "prime" quality by
25 a national rating service, issued by corporations organized and

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1 operating within the United States;

2 (2) medium-term notes and corporate notes with
3 a maturity not exceeding five years that are rated A or its
4 equivalent or better by a nationally recognized rating service
5 and that are issued by a corporation organized and operating in
6 the United States; or

7 (3) an asset-backed obligation with a maturity
8 not exceeding five years that is rated AAA or its equivalent by
9 a nationally recognized rating service.

10 0. The state treasurer, with the advice and consent
11 of the state board of finance, may also invest in:

12 (1) shares of a diversified investment company
13 registered pursuant to the federal Investment Company Act of
14 1940 that invests in United States fixed income securities or
15 debt instruments authorized pursuant to Subsections I, J and N
16 of this section, provided that the investment company has total
17 assets under management of at least one billion dollars
18 (\$1,000,000,000) and the investments made by the state
19 treasurer pursuant to this paragraph are less than five percent
20 of the assets of the investment company; or

21 (2) individual, common or collective trust
22 funds of banks or trust companies that invest in United States
23 fixed income securities or debt instruments authorized pursuant
24 to Subsections I, J and N of this section, provided that the
25 investment manager has assets under management of at least one

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1 billion dollars (\$1,000,000,000) and the investments made by
2 the state treasurer pursuant to this paragraph are less than
3 five percent of the assets of the individual, common or
4 collective trust fund.

5 P. ~~[No]~~ Public funds to be invested in negotiable
6 securities or loans to financial institutions fully secured by
7 negotiable securities at current market value shall not be paid
8 out unless there is a contemporaneous transfer of the
9 securities at the earliest time industry practice permits, but
10 in all cases, settlement shall be on a same-day basis either by
11 physical delivery or, in the case of uncertificated securities,
12 by appropriate book entry on the books of the issuer, to the
13 purchaser or to a reputable ~~[third-party]~~ safekeeping financial
14 institution acting as agent or trustee for the purchaser, which
15 agent or trustee shall furnish timely confirmation to the
16 purchaser."

17 Section 2. Section 6-10-21 NMSA 1978 (being Laws 1927,
18 Chapter 87, Section 1, as amended) is amended to read:

19 "6-10-21. SECURITY FOR DEPOSITS--SAFEKEEPING--REGULATIONS
20 OF STATE BOARD OF FINANCE.--The state board of finance is
21 authorized and directed to regulate, by general regulation or
22 by special orders applicable to individual cases, the
23 safekeeping of bonds or other securities delivered by any bank
24 or savings and loan association as security for deposits of
25 public money. The bonds or securities shall be delivered to a

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1 ~~[third-party]~~ custodian, which shall be a federal reserve bank
2 or branch thereof or ~~[in]~~ any other bank designated by the
3 state board of finance and qualified to perform custodial
4 functions in ~~[the]~~ any state ~~[of New Mexico]~~. The bank or
5 savings and loan association delivering securities to that
6 custodial bank shall enter into a written agreement with the
7 custodial bank containing such conditions that will adequately
8 protect the interests of the state, county, city, school
9 district or institution interested in the bonds and
10 securities."