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HOUSE BILL 596

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

Luciano "Lucky" Varela

FOR THE LEGISLATIVE FINANCE COMMITTEE

AN ACT

RELATING TO THE INVESTMENT OF PUBLIC MONEY; PROVIDING
ADDITIONAL CRITERIA FOR INVESTMENTS BY THE STATE TREASURER IN
REPURCHASE AGREEMENTS; REQUIRING THAT THE SHORT-TERM INVESTMENT
FUND MAINTAIN A "AA" OR HIGHER RATING; RECONCILING MULTIPLE
AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2005.

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 by Laws 2005, Chapter 238,
Section 1 and by Laws 2005, Chapter 239, Section 1) 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

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1 money on deposit, the state treasurer and county or municipal
2 treasurers who have on hand any public money by virtue of their
3 offices shall make deposit of that money in banks and savings
4 and loan associations, and may make deposit of that money in
5 credit unions whose deposits are insured by an agency of the
6 United States, designated by the authority authorized by law to
7 so designate to receive the deposits of all money thereafter
8 received or collected by the treasurers.

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

13 C. The state treasurer may deposit money in one or
14 more accounts with any such bank, savings and loan association
15 or credit union, subject to the limitation on credit union
16 accounts.

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

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

11 E. "Deposit", as used in this section, means either
12 investment or deposit and includes share, share certificate and
13 share draft.

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

25 (1) bonds or negotiable securities of the

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1 United States, the state or a county, municipality or school
2 district that has a taxable valuation of real property for the
3 last preceding year of at least one million dollars
4 (\$1,000,000) and that has not defaulted in the payment of any
5 interest or sinking fund obligation or failed to meet any bonds
6 at maturity at any time within five years last preceding; or

7 (2) securities that are issued by the United
8 States government or by its agencies or instrumentalities and
9 that are either direct obligations of the United States, the
10 federal home loan mortgage association, the federal national
11 mortgage association, the federal farm credit bank, federal
12 home loan banks or the student loan marketing association or
13 that are backed by the full faith and credit of the United
14 States government.

15 G. The treasurer of a class A county or the
16 treasurer of a municipality having a population of more than
17 sixty-five thousand according to the most recent federal
18 decennial census and located within a class A county, with the
19 advice and consent of the boards of finance charged with the
20 supervision and control of the funds, [~~has the power to~~] may
21 invest all sinking funds or money remaining unexpended from the
22 proceeds of any issue of bonds or other negotiable securities
23 of the county or municipality that is entrusted to the
24 treasurer's care and custody and all money not immediately
25 necessary for the public uses of the county or municipality not

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1 invested or deposited in banks, savings and loan associations
2 or credit unions in:

3 (1) shares of a diversified investment company
4 registered pursuant to the federal Investment Company Act of
5 1940 that invests in fixed-income securities or debt
6 instruments that are listed in a nationally recognized, broad-
7 market, fixed-income-securities market index; provided that the
8 investment company or manager has total assets under management
9 of at least one hundred million dollars (\$100,000,000) and
10 provided that the board of finance of the county or
11 municipality may allow reasonable administrative and investment
12 expenses to be paid directly from the income or assets of these
13 investments;

14 (2) individual, common or collective trust
15 funds of banks or trust companies that invest in fixed-income
16 securities or debt instruments that are listed in a nationally
17 recognized, broad-market, fixed-income-securities market index;
18 provided that the investment company or manager has total
19 assets under management of at least one hundred million dollars
20 (\$100,000,000) and provided that the board of finance of the
21 county or municipality may allow reasonable administrative and
22 investment expenses to be paid directly from the income or
23 assets of these investments; or

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

5 H. A local public body, with the advice and consent
6 of the body charged with the supervision and control of the
7 local public body's respective funds, [~~has the power to~~] may
8 invest all sinking funds or money remaining unexpended from the
9 proceeds of any issue of bonds or other negotiable securities
10 of the investor that is entrusted to the local public body's
11 care and custody and all money not immediately necessary for
12 the public uses of the investor and not otherwise invested or
13 deposited in banks, savings and loan associations or credit
14 unions in contracts with banks, savings and loan associations
15 or credit unions for the present purchase and resale at a
16 specified time in the future of specific securities at
17 specified prices at a price differential representing the
18 interest income to be earned by the investor. The contract
19 shall be fully secured by obligations of the United States or
20 other securities backed by the United States having a market
21 value of at least one hundred two percent of the contract. The
22 collateral required for investment in the contracts provided
23 for in this subsection shall be shown on the books of the
24 financial institution as being the property of the investor and
25 the designation shall be contemporaneous with the investment.

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1 As used in this subsection, "local public body" includes all
2 political subdivisions of the state and agencies,
3 instrumentalities and institutions thereof; provided that home
4 rule municipalities that prior to July 1, 1994 had enacted
5 ordinances authorizing the investment of repurchase agreements
6 may continue investment in repurchase agreements pursuant to
7 those ordinances.

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

19 J. The state treasurer, with the advice and consent
20 of the state board of finance, may also invest in contracts for
21 the present purchase and resale at a specified time in the
22 future, not to exceed one year or, in the case of bond
23 proceeds, not to exceed three years, of specific securities at
24 specified prices at a price differential representing the
25 interest income to be earned by the state. Such contract shall

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1 not be invested in unless the contract is fully secured by
2 obligations of the United States or its agencies or
3 instrumentalities or by other securities backed by the United
4 States or its agencies or instrumentalities having a market
5 value of at least one hundred two percent of the amount of the
6 contract. The securities required as collateral under this
7 subsection shall be delivered to a third-party custodian bank
8 pursuant to a contract with the state and the counterparty or
9 to the fiscal agent of New Mexico or its designee. Delivery
10 shall be made simultaneously with the transfer of funds or as
11 soon as practicable, but no later than the same day that the
12 funds are transferred.

13 K. The state treasurer, with the advice and consent
14 of the state board of finance, may also invest in contracts for
15 the temporary exchange of state-owned securities for the use of
16 broker-dealers, banks or other recognized institutional
17 investors in securities, for periods not to exceed one year for
18 a specified fee rate. Such contract shall not be invested in
19 unless the contract is fully secured by exchange of an
20 irrevocable letter of credit running to the state, cash or
21 equivalent collateral of at least one hundred two percent of
22 the market value of the securities plus accrued interest
23 temporarily exchanged. The collateral required by this
24 subsection shall be delivered to the fiscal agent of New Mexico
25 or its designee simultaneously with the transfer of funds or as

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1 soon as practicable, but no later than the same day that the
2 state-owned securities are transferred.

3 ~~[L. The collateral required for either of the forms~~
4 ~~of investment in Subsection J or K of this section shall be~~
5 ~~delivered to the fiscal agent of New Mexico or its designee~~
6 ~~contemporaneously with the transfer of funds or delivery of the~~
7 ~~securities at the earliest time industry practice permits, but~~
8 ~~in all cases, settlement shall be on a same-day basis.~~

9 M.] L. Neither of the contracts in Subsection J or
10 K of this section shall be invested in unless the contracting
11 bank, brokerage firm or recognized institutional investor has a
12 net worth in excess of five hundred million dollars
13 (\$500,000,000).

14 ~~[N.]~~ M. The state treasurer, with the advice and
15 consent of the state board of finance, may also invest in any
16 of the following investments in an amount not to exceed forty
17 percent of any fund that the state treasurer invests:

18 (1) commercial paper rated "prime" quality by
19 a national rating service, issued by corporations organized and
20 operating within the United States;

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

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

4 [~~Θ-~~] N. The state treasurer, with the advice and
5 consent of the state board of finance, may also invest in:

6 (1) shares of a diversified investment company
7 registered pursuant to the federal Investment Company Act of
8 1940 that invests in United States fixed-income securities or
9 debt instruments authorized pursuant to Subsections I, J and
10 [~~N~~] M of this section, provided that the investment company has
11 total assets under management of at least one billion dollars
12 (\$1,000,000,000) and the investments made by the state
13 treasurer pursuant to this paragraph are less than five percent
14 of the assets of the investment company; or

15 (2) individual, common or collective trust
16 funds of banks or trust companies that invest in United States
17 fixed-income securities or debt instruments authorized pursuant
18 to Subsections I, J and [~~N~~] M of this section, provided that
19 the investment manager has assets under management of at least
20 one billion dollars (\$1,000,000,000) and the investments made
21 by the state treasurer pursuant to this paragraph are less than
22 five percent of the assets of the individual, common or
23 collective trust fund.

24 [~~P-~~] O. Public funds to be invested in negotiable
25 securities or loans to financial institutions fully secured by

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1 negotiable securities at current market value shall not be paid
2 out unless there is a contemporaneous transfer of the
3 securities at the earliest time industry practice permits, but
4 in all cases, settlement shall be on a same-day basis either by
5 physical delivery or, in the case of uncertificated securities,
6 by appropriate book entry on the books of the issuer, to the
7 purchaser or to a reputable safekeeping financial institution
8 acting as agent or trustee for the purchaser, which agent or
9 trustee shall furnish timely confirmation to the purchaser."

10 Section 2. Section 6-10-10.1 NMSA 1978 (being Laws 1988,
11 Chapter 61, Section 2, as amended) is amended to read:

12 "6-10-10.1. SHORT-TERM INVESTMENT FUND CREATED--
13 DISTRIBUTION OF EARNINGS--REPORT OF INVESTMENTS.--

14 A. There is created in the state treasury the
15 "short-term investment fund". The fund shall consist of all
16 deposits from governmental entities and Indian tribes or
17 pueblos that are placed in the custody of the state treasurer
18 for short-term investment purposes pursuant to this section.
19 The state treasurer shall maintain a separate account for each
20 governmental entity and Indian tribe or pueblo having deposits
21 in the fund.

22 B. If a local public body is unable to receive
23 payment on public money at the rate of interest as set forth in
24 Section 6-10-36 NMSA 1978 from financial institutions within
25 the geographic boundaries of the governmental unit, then a

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1 local public finance official having money of that local public
2 body in ~~[his]~~ that official's custody not required for current
3 expenditure may, with the consent of the appropriate local
4 board of finance, if any, remit some or all of such money to
5 the state treasurer for deposit for the purpose of short-term
6 investment as allowed by this section.

7 C. Before local funds are invested or reinvested
8 for the purpose of short-term investment pursuant to this
9 section, the local public body finance official shall notify
10 and make such funds available to banks, savings and loan
11 associations and credit unions located within the geographical
12 boundaries of their respective governmental unit, subject to
13 the limitation on credit union accounts. To be eligible for
14 such funds, the financial institution shall pay to the local
15 public body the rate established by the state treasurer
16 pursuant to a policy adopted by the state board of finance for
17 such short-term investments.

18 D. The local public body finance official shall
19 specify the length of time a deposit shall be in the short-term
20 investment fund, but in any event the deposit shall not be made
21 for more than one hundred eighty-one days. The state treasurer
22 through the use of the state fiscal agent shall separately
23 track each such deposit and shall make such information
24 available to the public upon written request.

25 E. The state treasurer shall invest the short-term

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1 investment fund as provided for state funds under Section
2 6-10-10 NMSA 1978 in investments with a maturity at the time of
3 purchase that does not exceed three hundred ninety-seven days.
4 The state treasurer may elect to have the short-term investment
5 fund consolidated for investment purposes with the state funds
6 under the control of the state treasurer; provided that
7 accurate and detailed accounting records are maintained for the
8 account of each participating entity and Indian tribe or pueblo
9 and that a proportionate amount of interest earned is credited
10 to each of the separate government accounts. The fund shall be
11 invested to achieve its objective, which is to realize the
12 maximum return consistent with safe and prudent management.

13 F. At the end of each month, all net investment
14 income or losses from investment of the short-term investment
15 fund shall be distributed by the state treasurer to the
16 contributing entities and Indian tribes or pueblos in amounts
17 directly proportionate to the respective amounts deposited in
18 the fund and the length of time the amounts in the fund were
19 invested. The state treasurer shall charge participating
20 entities, Indian tribes and pueblos reasonable audit,
21 administrative and investment expenses to be paid directly from
22 their net investment income for the investment and
23 administrative services provided pursuant to this section.

24 G. Investments of the short-term investment fund
25 shall be made in such a manner that the fund maintains a "AA"

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1 or higher rating. Each fiscal year and at such other times as
2 directed by the state board of finance, the state treasurer
3 shall cause to have the short-term investment fund rated by a
4 nationally recognized statistical rating organization. If the
5 rating received by the fund is lower than "AA", the state
6 treasurer shall immediately submit a plan to the state board of
7 finance detailing the steps that will be taken to obtain a "AA"
8 or higher rating.

9 [~~G.~~] H. As used in this section, "local public
10 body" means a political subdivision of the state, including
11 school districts and post-secondary educational institutions.

12 [~~H.~~] I. In addition to the deposit of funds of
13 local public bodies, the state treasurer may also accept for
14 deposit, deposit and account for, in the same manner as funds
15 of local public bodies, funds of the following governmental
16 entities if the governing authority of the entity approves by
17 resolution the deposit of the funds for the short-term
18 investment:

19 (1) the agricultural commodity commission
20 established under the Agricultural Commodity Commission Act;

21 (2) the Albuquerque metropolitan arroyo flood
22 control authority established under the Arroyo Flood Control
23 Act;

24 (3) the business improvement district
25 management committee established under the Business Improvement

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1 District Act;

2 (4) the New Mexico community development
3 council established under the New Mexico Community Assistance
4 Act;

5 (5) the governing authority of only special
6 districts authorized under Chapter 73 NMSA 1978;

7 (6) the board of trustees established under
8 the Economic Advancement District Act;

9 (7) the board of directors of a corporation or
10 foundation established under the Educational Assistance Act;

11 (8) a board of directors established under the
12 Flood Control District Act;

13 (9) the New Mexico hospital equipment loan
14 council established under the Hospital Equipment Loan Act;

15 (10) the authority established under the
16 Industrial and Agricultural Finance Authority Act;

17 (11) the authority established under the Las
18 Cruces Arroyo Flood Control Act;

19 (12) the authority established under the
20 Mortgage Finance Authority Act;

21 (13) the authority established under the
22 Municipal Mortgage Finance Act;

23 (14) the authority established under the
24 Public School Insurance Authority Act;

25 (15) the authority established under the

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1 Southern Sandoval County Arroyo Flood Control Act;
2 (16) a board of trustees established under the
3 Special Hospital District Act;
4 (17) the authority established under the
5 New Mexico Finance Authority Act; and
6 (18) the corporation established under the
7 Small Business Investment Act.

8 ~~[F.]~~ J. In addition to the deposit of funds of
9 local public bodies, the state treasurer may also accept for
10 deposit and deposit and account for, in the same manner as
11 funds of local public bodies, funds of any Indian tribe or
12 pueblo in the state if authorized to do so under a joint powers
13 agreement executed by the state treasurer and the governing
14 authority of the Indian tribe or pueblo under the provisions of
15 the Joint Powers Agreements Act."