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SENATE BILL 24

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

George K. Munoz

ENDORSED BY THE INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

AN ACT

RELATING TO PUBLIC FINANCES; CLARIFYING AUTHORIZED INVESTMENTS OF THE STATE TREASURER; CHANGING THE NAME OF THE PARTICIPATING GOVERNMENT INVESTMENT FUND TO THE LOCAL GOVERNMENT INVESTMENT POOL; INCREASING THE PERCENTAGE OF GENERAL FUNDS AND BOND PROCEEDS THAT MAY BE INVESTED IN THE LOCAL GOVERNMENT INVESTMENT POOL.

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

SECTION 1. Section 6-10-1.1 NMSA 1978 (being Laws 1987, Chapter 79, Section 3, as amended) is amended to read:

"6-10-1.1. DEFINITIONS.--As used in Chapter 6, Article 10 NMSA 1978:

A. "department" means the department of finance and administration;

B. "deposit" includes share, share certificate and

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1 share draft;

2 C. "eligible governing body" means a local
3 governing body, the governing authority of a tribe or any other
4 governmental or quasi-governmental body created or authorized
5 to be created pursuant to New Mexico statutes;

6 D. "finance officer" means the chief financial
7 officer of an eligible governing body or a participating
8 government;

9 E. "local governing body" means a political
10 subdivision of the state, including a school district or a
11 post-secondary educational institution;

12 F. "participating government" means an eligible
13 governing body or the state treasurer on behalf of the general
14 fund that has invested money in the [~~participating government~~
15 ~~investment fund~~] local government investment pool;

16 G. "secretary" means the secretary of finance and
17 administration;

18 H. "treasury" means the master depository or cash
19 concentration account held at the state's fiscal agent bank and
20 administered by the office of the state treasurer, unless the
21 context otherwise clearly indicates; and

22 I. "tribe" means a federally recognized Indian
23 nation, tribe or pueblo or a subdivision or agency of a
24 federally recognized Indian nation, tribe or pueblo, located
25 wholly or partially in New Mexico."

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1 SECTION 2. Section 6-10-10 NMSA 1978 (being Laws 1933,
2 Chapter 175, Section 4, as amended) is amended to read:

3 "6-10-10. DEPOSIT AND INVESTMENT OF FUNDS.--

4 A. Upon the certification or designation of a bank,
5 savings and loan association or credit union whose deposits are
6 insured by an agency of the United States to receive public
7 money on deposit, the state treasurer and county or municipal
8 treasurers who have on hand any public money by virtue of their
9 offices shall make deposit of that money in banks and savings
10 and loan associations and may make deposit of that money in
11 credit unions whose deposits are insured by an agency of the
12 United States, designated by the authority authorized by law to
13 so designate to receive the deposits of all money thereafter
14 received or collected by the treasurers.

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

19 C. The state treasurer may deposit money in one or
20 more accounts with any such bank, savings and loan association
21 or credit union, subject to the limitation on credit union
22 accounts.

23 D. Duplicate receipts or deposit slips shall be
24 taken for each deposit made pursuant to Subsection A, B or C of
25 this section. When deposits are made by the state treasurer,

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1 one copy of the receipt or deposit slip shall be retained by
2 the state treasurer and the other copy shall be filed monthly
3 on the first day of each month with the financial control
4 division of the department [~~of finance and administration~~].

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

17 E. "Deposit", as used in this section, means either
18 investment or deposit and includes share, share certificate and
19 share draft.

20 F. County or municipal treasurers, with the advice
21 and consent of their respective boards of finance charged with
22 the supervision and control of the respective funds, may invest
23 all sinking funds or money remaining unexpended from the
24 proceeds of any issue of bonds or other negotiable securities
25 of any county, municipality or school district that is

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1 entrusted to their care and custody and all money not
2 immediately necessary for the public uses of the counties,
3 municipalities or school districts not invested or deposited in
4 banks, savings and loan associations or credit unions in:

5 (1) bonds or negotiable securities of the
6 United States, the state or a county, municipality or school
7 district that has a taxable valuation of real property for the
8 last preceding year of at least one million dollars
9 (\$1,000,000) and that has not defaulted in the payment of any
10 interest or sinking fund obligation or failed to meet any bonds
11 at maturity at any time within five years last preceding; or

12 (2) securities that are issued and backed by
13 the full faith and credit of the United States government or
14 issued by its agencies or instrumentalities [~~and that are~~
15 ~~either direct obligations of the United States, the federal~~
16 ~~home loan mortgage association, the federal national mortgage~~
17 ~~association, the federal farm credit bank, federal home loan~~
18 ~~banks or the student loan marketing association or that are~~
19 ~~backed by the full faith and credit of the United States~~
20 ~~government~~].

21 G. The treasurer of a class A county or the
22 treasurer of a municipality having a population of more than
23 sixty-five thousand according to the most recent federal
24 decennial census and located within a class A county, with the
25 advice and consent of the boards of finance charged with the

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1 supervision and control of the funds, may invest all sinking
2 funds or money remaining unexpended from the proceeds of any
3 issue of bonds or other negotiable securities of the county or
4 municipality that is entrusted to the treasurer's care and
5 custody and all money not immediately necessary for the public
6 uses of the county or municipality not invested or deposited in
7 banks, savings and loan associations or credit unions in:

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

19 (2) individual, common or collective trust
20 funds of banks or trust companies that invest in fixed-income
21 securities or debt instruments that are listed in a nationally
22 recognized, broad-market, fixed-income-securities market index;
23 provided that the investment company or manager has total
24 assets under management of at least one hundred million dollars
25 (\$100,000,000) and provided that the board of finance of the

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1 county or municipality may allow reasonable administrative and
2 investment expenses to be paid directly from the income or
3 assets of these investments; or

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

10 H. A local public body, with the advice and consent
11 of the body charged with the supervision and control of the
12 local public body's respective funds, may invest all sinking
13 funds or money remaining unexpended from the proceeds of any
14 issue of bonds or other negotiable securities of the investor
15 that is entrusted to the local public body's care and custody
16 and all money not immediately necessary for the public uses of
17 the investor and not otherwise invested or deposited in banks,
18 savings and loan associations or credit unions in contracts
19 with banks, savings and loan associations or credit unions for
20 the present purchase and resale at a specified time in the
21 future of specific securities at specified prices at a price
22 differential representing the interest income to be earned by
23 the investor. The contract shall be fully secured by
24 obligations of the United States or other securities backed by
25 the United States having a market value of at least one hundred

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1 two percent of the contract. The collateral required for
2 investment in the contracts provided for in this subsection
3 shall be shown on the books of the financial institution as
4 being the property of the investor and the designation shall be
5 contemporaneous with the investment. As used in this
6 subsection, "local public body" includes all political
7 subdivisions of the state and agencies, instrumentalities and
8 institutions thereof; provided that home rule municipalities
9 that prior to July 1, 1994 had enacted ordinances authorizing
10 the investment of repurchase agreements may continue investment
11 in repurchase agreements pursuant to those ordinances.

12 I. The state treasurer, with the advice and consent
13 of the state board of finance, may invest money held in demand
14 deposits and not immediately needed for the operation of state
15 government and money held in the [~~participating government~~
16 ~~investment fund~~] local government investment pool, except as
17 provided in Section 6-10-10.1 NMSA 1978. The investments may
18 be made in securities that are issued and backed by the full
19 faith and credit of the United States government or issued by
20 its [~~departments or agencies and are either direct obligations~~
21 ~~of the United States or are backed by the full faith and credit~~
22 ~~of the United States government or agencies sponsored by the~~
23 ~~United States government~~] agencies or instrumentalities.

24 J. 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 present purchase and resale at a specified time in the
2 future, not to exceed one year or, in the case of bond
3 proceeds, not to exceed three years, of specific securities at
4 specified prices at a price differential representing the
5 interest income to be earned by the state. Such contract shall
6 not be invested in unless the contract is fully secured by
7 obligations of the United States or its agencies or
8 instrumentalities or by other securities backed by the United
9 States or its agencies or instrumentalities having a market
10 value of at least one hundred two percent of the amount of the
11 contract. The securities required as collateral under this
12 subsection shall be delivered to a third-party custodian bank
13 pursuant to a contract with the state and the counterparty or
14 to the fiscal agent of New Mexico or its designee. Delivery
15 shall be made simultaneously with the transfer of funds or as
16 soon as practicable, but no later than the same day that the
17 funds are transferred.

18 K. The state treasurer, with the advice and consent
19 of the state board of finance, may also invest in contracts for
20 the temporary exchange of state-owned securities for the use of
21 broker-dealers, banks or other recognized institutional
22 investors in securities, for periods not to exceed one year for
23 a specified fee rate. Such contract shall not be invested in
24 unless the contract is fully secured by exchange of an
25 irrevocable letter of credit running to the state, cash or

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1 equivalent collateral of at least one hundred two percent of
2 the market value of the securities plus accrued interest
3 temporarily exchanged. The collateral required by this
4 subsection shall be delivered to the [~~fiscal agent~~] state of
5 New Mexico or its designee simultaneously with the transfer of
6 funds or as soon as practicable, but no later than the same day
7 that the state-owned securities are transferred.

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

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

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

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

24 (3) an asset-backed obligation with a maturity
25 not exceeding five years that is rated AAA or its equivalent by

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1 a nationally recognized rating service.

2 N. The state treasurer, with the advice and consent
3 of the state board of finance, may also invest in:

4 (1) shares of an open-ended diversified
5 investment company that:

6 (a) is registered with the United States
7 securities and exchange commission;

8 (b) complies with the diversification,
9 quality and maturity requirements of Rule 2a-7, or any
10 successor rule, of the United States securities and exchange
11 commission applicable to money market mutual funds; and

12 (c) assesses no fees pursuant to Rule
13 12b-1, or any successor rule, of the United States securities
14 and exchange commission, no sales load on the purchase of
15 shares and no contingent deferred sales charge or other similar
16 charges, however designated, provided that the state shall not,
17 at any time, own more than five percent of a money market
18 mutual fund's assets;

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

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1 five percent of the assets of the individual, common or
2 collective trust fund; [~~or~~]

3 (3) the [~~participating government investment~~
4 ~~fund~~] local government investment pool managed by the office of
5 the state treasurer. Investments made pursuant to this
6 paragraph shall [~~be less than five~~], in aggregate, be no more
7 than thirty-five percent of the total assets of the
8 [~~participating government investment fund~~] local government
9 investment pool;

10 (4) securities issued by the state of New
11 Mexico, its agencies, institutions, counties, municipalities,
12 school districts, community college districts or other
13 subdivisions of the state, or as otherwise provided by law; or

14 (5) securities issued by states other than New
15 Mexico or governmental entities in states other than New
16 Mexico.

17 0. Public funds to be invested in negotiable
18 securities or loans to financial institutions fully secured by
19 negotiable securities at current market value shall not be paid
20 out unless there is a contemporaneous transfer of the
21 securities at the earliest time industry practice permits, but
22 in all cases, settlement shall be on a same-day basis either by
23 physical delivery or, in the case of uncertificated securities,
24 by appropriate book entry on the books of the issuer, to the
25 purchaser or to a reputable safekeeping financial institution

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1 acting as agent or trustee for the purchaser, which agent or
2 trustee shall furnish timely confirmation to the purchaser."

3 SECTION 3. Section 6-10-10.1 NMSA 1978 (being Laws 1988,
4 Chapter 61, Section 2, as amended) is amended to read:

5 "6-10-10.1. [~~PARTICIPATING GOVERNMENT INVESTMENT FUND~~]
6 LOCAL GOVERNMENT INVESTMENT POOL CREATED--DISTRIBUTION OF
7 EARNINGS--REPORT OF INVESTMENTS.--

8 A. There is created in the state treasury the
9 [~~"participating government investment fund"~~] "local government
10 investment pool". The fund shall consist of all deposits from
11 participating governments, including revenues dedicated to
12 repaying bonds, that are placed in the custody of the state
13 treasurer for investment purposes pursuant to this section.
14 The state treasurer shall maintain one or more separate
15 accounts for each participating government having deposits in
16 the [~~participating government investment fund~~] local government
17 investment pool and may divide the fund into two or more
18 subfunds, as the state treasurer deems appropriate, for short-
19 term and medium-term investment purposes, including one or more
20 subfunds for bond proceeds deposited by participating
21 governments.

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

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1 body, or if the eligible governing body is not bound by the
2 terms of Section 6-10-36 NMSA 1978, the finance officer having
3 control of the money of that eligible governing body not
4 required for current expenditure may, with the consent of the
5 board of finance of the eligible governing body if consent is
6 required by the laws or rules of the eligible governing body,
7 remit some or all of the money to the state treasurer for
8 deposit for the purpose of investment as allowed by this
9 section.

10 C. Before funds are invested or reinvested pursuant
11 to this section, a finance officer shall notify and make the
12 funds available for investment to banks, savings and loan
13 associations and credit unions located within the geographical
14 boundaries of the participating government or the eligible
15 governing body, subject to the limitation on credit union
16 accounts. To be eligible for deposit of the government funds,
17 the financial institution shall pay to the participating
18 government or eligible governing body the rate established by
19 the state treasurer pursuant to a policy adopted by the state
20 board of finance for the investments.

21 D. A finance officer shall specify the length of
22 time a deposit shall be in the [~~participating government~~
23 ~~investment fund~~] local government investment pool. The state
24 treasurer through the use of the state fiscal agent shall
25 separately track each deposit and shall make information

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1 regarding the deposit available to the public upon written
2 request.

3 E. The state treasurer shall invest the
4 [~~participating government investment fund~~] local government
5 investment pool as provided in Section 6-10-10 NMSA 1978
6 regarding the investment of state funds in investments with a
7 maturity at the time of purchase that does not exceed three
8 years. The state treasurer may elect to have the
9 [~~participating government investment fund~~] local government
10 investment pool consolidated for investment purposes with the
11 state funds under the control of the state treasurer; provided
12 that accurate and detailed accounting records are maintained
13 for the account of each participating government and that a
14 proportionate amount of interest earned is credited to each of
15 the separate accounts of a participating government. The fund
16 shall be invested to achieve its objective, which is to realize
17 the maximum return consistent with safe and prudent management.

18 F. At the end of each month, all net investment
19 income or losses from investment of the [~~participating~~
20 ~~government investment fund~~] local government investment pool
21 shall be distributed by the state treasurer to the accounts of
22 participating governments in amounts directly proportionate to
23 the respective amounts deposited by them in the [~~participating~~
24 ~~government investment fund~~] local government investment pool
25 and the length of time the amounts in each account were

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1 invested.

2 G. The state treasurer shall charge participating
3 governments reasonable audit, administrative and investment
4 expenses and shall deduct those expenses directly from the net
5 investment income for the investment and administrative
6 services provided pursuant to this subsection. The amount of
7 the charges, the manner of the use by the state treasurer and
8 the nature of bond-related services to be offered shall be
9 established in rules adopted and promulgated by the state
10 treasurer subject to approval by the state board of finance.

11 H. Subject to appropriation by the legislature,
12 amounts deducted from the accounts of participating governments
13 for charges permitted pursuant to this section shall be
14 expended by the state treasurer in fiscal year 2008 and in
15 subsequent fiscal years for the administration and management
16 of the [~~participating government investment fund~~] local
17 government investment pool, services provided to participating
18 governments related to investment of their money in that fund
19 and other services authorized by this section. Balances
20 remaining at the end of a fiscal year from the amounts deducted
21 pursuant to this section shall revert to the general fund.
22 Balances in the state treasurer's operating account resulting
23 from deductions taken pursuant to this section in excess of the
24 amount required to provide administration, management and
25 related services required by this subsection or other services

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1 authorized by this section shall be offset by reductions in the
2 charges made by the state treasurer to the accounts of
3 participating governments in subsequent deductions from
4 participating governments' accounts.

5 I. ~~[Investments of the participating government~~
6 ~~investment fund shall be made in such a manner that the portion~~
7 ~~of the fund invested in short-term investments maintains an~~
8 ~~"AA" or higher rating.]~~ Each fiscal year ~~[and at such other~~
9 ~~times as directed by the state board of finance]~~, the state
10 treasurer ~~[shall]~~ may cause to have the short-term investment
11 portion of the ~~[participating government investment fund]~~ local
12 government investment pool rated by a nationally recognized
13 statistical rating organization. If the rating received by the
14 short-term investment portion of the fund is lower than "AA",
15 the state treasurer shall immediately submit a plan to the
16 state board of finance detailing the steps that will be taken
17 to obtain an "AA" or higher rating.

18 J. The state treasurer may offer to provide to
19 participating governments services related to requirements of
20 the federal income tax laws applicable to the investment of
21 bond proceeds.

22 K. A tribe or quasi-governmental body created
23 pursuant to New Mexico statute may become a participating
24 government only if the governing authority of the tribe or
25 quasi-governmental body has adopted a resolution authorizing

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1 the tribe or quasi-governmental body to remit money to the
2 state treasurer for investment in the [~~participating government~~
3 ~~investment fund~~] local government investment pool.

4 L. Deposits by the state treasurer on behalf of the
5 general fund and bond proceeds investment pools shall [~~not~~
6 ~~exceed~~], in aggregate, be no more than thirty-five percent of
7 the total amount in the [~~participating government investment~~
8 ~~fund~~] local government investment pool at any time."

9 SECTION 4. Section 6-10-16 NMSA 1978 (being Laws 1969,
10 Chapter 243, Section 1, as amended) is amended to read:

11 "6-10-16. SECURITY FOR DEPOSITS OF PUBLIC MONEY.--

12 A. Deposits of public money shall be secured by:

13 (1) securities of the United States, its
14 agencies or instrumentalities;

15 (2) securities of the state of New Mexico, its
16 agencies, instrumentalities, counties, municipalities or other
17 subdivisions;

18 (3) securities, including student loans, that
19 are guaranteed by the United States or the state of New Mexico;

20 (4) revenue bonds that are underwritten by a
21 member of the [~~national association of securities dealers~~]
22 financial industry regulatory authority, known as [~~"N.A.S.D."~~]
23 FINRA, and are rated "BAA" or above by a nationally recognized
24 bond rating service; or

25 (5) letters of credit issued by a federal home

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1 loan bank.

2 B. No security is required for the deposit of
3 public money that is insured by the federal deposit insurance
4 corporation or the national credit union administration.

5 C. ~~[Securities which are obligations of the state~~
6 ~~of New Mexico, its agencies, institutions, counties,~~
7 ~~municipalities or other subdivisions shall be accepted as~~
8 ~~security at par value.]~~ All [other] securities shall be
9 accepted as security at market value. The restrictions of
10 Subsection A of this section apply to all securities subject to
11 this subsection."