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SENATE BILL 231

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

INTRODUCED BY

Timothy M. Keller and Jimmie C. Hall

AN ACT

RELATING TO PUBLIC MONEY; ALLOWING SCHOOL DISTRICTS AND CERTAIN  
CHARTER SCHOOLS TO MAKE INVESTMENTS OF PUBLIC MONEY; ALLOWING  
SCHOOL DISTRICTS AND CERTAIN CHARTER SCHOOLS TO DETERMINE  
DEPOSITS WITH LOCAL QUALIFIED DEPOSITORIES.

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  
share draft;

C. "eligible governing body" means a local

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1 governing body, the governing authority of a tribe or any other  
2 governmental or quasi-governmental body created or authorized  
3 to be created pursuant to New Mexico statutes;

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

7 E. "local governing body" means a political  
8 subdivision of the state, including a school district, a  
9 charter school that is a board of finance or a post-secondary  
10 educational institution;

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

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

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

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

25 SECTION 2. Section 6-10-10 NMSA 1978 (being Laws 1933,

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1 Chapter 175, Section 4, as amended) is amended to read:

2 "6-10-10. DEPOSIT AND INVESTMENT OF FUNDS.--

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

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

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

25 D. Duplicate receipts or deposit slips shall be

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1 taken for each deposit made pursuant to Subsection A, B or C of  
2 this section. When deposits are made by the state treasurer,  
3 one copy of the receipt or deposit slip shall be retained by  
4 the state treasurer and the other copy shall be filed monthly  
5 on the first day of each month with the financial control  
6 division of the department of finance and administration. When  
7 deposits are made by the treasurer or any other authorized  
8 person making the deposits for a board of finance of a public  
9 or educational institution, one copy of the receipt or deposit  
10 slip shall be retained by the treasurer or authorized person  
11 making the deposit and the other copy shall be filed monthly on  
12 the first day of each month with that board of finance. When  
13 deposits are made by a county or municipal treasurer, one of  
14 the duplicate receipts or deposit slips shall be retained by  
15 the treasurer making the deposit and the other copy shall be  
16 filed monthly on the first day of each month with the secretary  
17 of the board of finance of the county or municipality for which  
18 that treasurer is acting.

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

22 F. County or municipal treasurers or school board  
23 designees, with the advice and consent of their respective  
24 boards of finance charged with the supervision and control of  
25 the respective funds, may invest all sinking funds or money

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1 remaining unexpended from the proceeds of any issue of bonds or  
2 other negotiable securities of any county, municipality or  
3 school district that is entrusted to their care and custody and  
4 all money not immediately necessary for the public uses of the  
5 counties, municipalities or school districts not invested or  
6 deposited in banks, savings and loan associations or credit  
7 unions in:

8 (1) bonds or negotiable securities of the  
9 United States, the state or a county, municipality or school  
10 district that has a taxable valuation of real property for the  
11 last preceding year of at least one million dollars  
12 (\$1,000,000) and that has not defaulted in the payment of any  
13 interest or sinking fund obligation or failed to meet any bonds  
14 at maturity at any time within five years last preceding; or

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

23 G. The treasurer of a class A county or the  
24 treasurer of a municipality having a population of more than  
25 sixty-five thousand according to the most recent federal

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1 decennial census and located within a class A county, with the  
2 advice and consent of the boards of finance charged with the  
3 supervision and control of the funds, may invest all sinking  
4 funds or money remaining unexpended from the proceeds of any  
5 issue of bonds or other negotiable securities of the county or  
6 municipality that is entrusted to the treasurer's care and  
7 custody and all money not immediately necessary for the public  
8 uses of the county or municipality not invested or deposited in  
9 banks, savings and loan associations or credit unions in:

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

21 (2) individual, common or collective trust  
22 funds of banks or trust companies that invest in fixed-income  
23 securities or debt instruments that are listed in a nationally  
24 recognized, broad-market, fixed-income-securities market index;  
25 provided that the investment company or manager has total

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

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

12 H. A local public body, with the advice and consent  
13 of the local governing body charged with the supervision and  
14 control of the local public body's respective funds, may 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 investor that is entrusted to the local public body's  
18 care and custody and all money not immediately necessary for  
19 the public uses of the investor and not otherwise invested or  
20 deposited in banks, savings and loan associations or credit  
21 unions in contracts with banks, savings and loan associations  
22 or credit unions for the present purchase and resale at a  
23 specified time in the future of specific securities at  
24 specified prices at a price differential representing the  
25 interest income to be earned by the investor. The contract

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1 shall be fully secured by obligations of the United States or  
2 other securities backed by the United States having a market  
3 value of at least one hundred two percent of the contract. The  
4 collateral required for investment in the contracts provided  
5 for in this subsection shall be shown on the books of the  
6 financial institution as being the property of the investor and  
7 the designation shall be contemporaneous with the investment.  
8 As used in this subsection, "local public body" includes all  
9 political subdivisions of the state and agencies,  
10 instrumentalities and institutions thereof; provided that home  
11 rule municipalities that prior to July 1, 1994 had enacted  
12 ordinances authorizing the investment of repurchase agreements  
13 may continue investment in repurchase agreements pursuant to  
14 those ordinances.

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

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

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

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1 unless the contract is fully secured by exchange of an  
2 irrevocable letter of credit running to the state, cash or  
3 equivalent collateral of at least one hundred two percent of  
4 the market value of the securities plus accrued interest  
5 temporarily exchanged. The collateral required by this  
6 subsection shall be delivered to the fiscal agent of New Mexico  
7 or its designee simultaneously with the transfer of funds or as  
8 soon as practicable, but no later than the same day that the  
9 state-owned securities are transferred.

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

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

6 (1) shares of an open-ended diversified  
7 investment company that:

8 (a) is registered with the United States  
9 securities and exchange commission;

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

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

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 M 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; or

5 (3) the participating government investment  
6 fund managed by the office of the state treasurer. Investments  
7 made pursuant to this paragraph shall be less than five percent  
8 of the total assets of the participating government investment  
9 fund.

10 O. Public funds to be invested in negotiable  
11 securities or loans to financial institutions fully secured by  
12 negotiable securities at current market value shall not be paid  
13 out unless there is a contemporaneous transfer of the  
14 securities at the earliest time industry practice permits, but  
15 in all cases, settlement shall be on a same-day basis either by  
16 physical delivery or, in the case of uncertificated securities,  
17 by appropriate book entry on the books of the issuer, to the  
18 purchaser or to a reputable safekeeping financial institution  
19 acting as agent or trustee for the purchaser, which agent or  
20 trustee shall furnish timely confirmation to the purchaser.

21 P. As used in this section:

22 (1) "school board" means a local school board  
23 or governing body of a charter school that has been designated  
24 by the public education department as a board of finance as  
25 provided in Section 22-8-38 NMSA 1978; and

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1                   (2) "school board designee" means the school  
2 district or charter school employee who has been designated by  
3 the superintendent of a school district or head administrator  
4 of a charter school to handle the funds of the school board or  
5 governing board."

6                   SECTION 3. Section 6-10-36 NMSA 1978 (being Laws 1977,  
7 Chapter 136, Section 1, as amended) is amended to read:

8                   "6-10-36. PUBLIC MONEY DEPOSITS OF CERTAIN GOVERNMENTAL  
9 UNITS--DISTRIBUTION--INTEREST.--

10                   A. All public money, except that in the custody of  
11 the state treasurer, institutions of higher education,  
12 technical and vocational institutes, incorporated  
13 municipalities and counties that have adopted home rule  
14 charters as authorized by the constitution of New Mexico and  
15 local school boards and governing bodies of charter schools  
16 that have been designated as boards of finance, shall be  
17 deposited in qualified depositories in accordance with the  
18 terms of this section or invested as otherwise provided by law.

19                   B. Deposits of funds of a governmental unit may be  
20 made in noninterest-bearing checking accounts in one or more  
21 banks or savings and loan associations designated as checking  
22 depositories located within the geographical boundaries of the  
23 governmental unit. In addition, deposits of funds may be in  
24 noninterest-bearing accounts in one or more credit unions  
25 designated as checking depositories located within the

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1 geographical boundaries of the governmental unit to the extent  
2 the deposits are insured by an agency of the United States. If  
3 there is no checking depository within the geographical  
4 boundaries of the governmental unit, one or more banks, savings  
5 and loan associations or credit unions within the county in  
6 which the principal office of the governmental unit is located  
7 may be so designated, but credit union deposits shall be  
8 insured by an agency of the United States.

9 C. As much as practicable, public money placed in  
10 interest-bearing deposits in banks and savings and loan  
11 associations shall be equitably distributed among all banks and  
12 savings and loan associations having their main or staffed  
13 branch offices within the geographical boundaries of the  
14 governmental unit that have qualified as public depositories by  
15 reason of insurance of the account by an agency of the United  
16 States or by depositing collateral security or by giving bond  
17 as provided by law and that desire a deposit of public money  
18 pursuant to this section. The deposits shall be in the  
19 proportion that each bank's or savings and loan association's  
20 deposits bears to the total deposits of all banks and savings  
21 and loan associations that have their main office or staffed  
22 branch office within the geographical boundaries of the  
23 governmental unit and that desire a deposit of public money  
24 pursuant to this section. The deposits of the main office of a  
25 savings and loan association and its staffed branch offices

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1 within the geographical boundaries of a governmental unit is  
2 the total deposits of the association multiplied by the  
3 percentage that deposits of the main office and the staffed  
4 branch offices located within the geographical boundaries of  
5 the governmental unit are of the total deposits of the  
6 association, net of any public fund deposits. The deposits of  
7 each staffed branch office or aggregate of staffed branch  
8 offices of a savings and loan association located outside the  
9 geographical boundaries of the governmental unit in which the  
10 main office is located is the total deposits of the association  
11 multiplied by the percentage that deposits of the branch or the  
12 aggregate of branches located outside the geographical  
13 boundaries of the governmental unit in which the main office is  
14 located are of the total deposits of the association, net of  
15 any public fund deposits. The director of the financial  
16 institutions division of the regulation and licensing  
17 department shall promulgate a formula for determining the  
18 deposits of banks' main offices and branches for the purposes  
19 of distribution of public money as provided for by this  
20 section.

21 D. Public money may be placed at the discretion of  
22 the designated board of finance or treasurer in interest-  
23 bearing deposits in credit unions having their main or staffed  
24 branch offices within the geographical boundaries of the  
25 governmental unit to the extent the deposits are insured by an

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1 agency of the United States.

2 E. The rate of interest for all public money  
3 deposited in interest-bearing accounts in banks, savings and  
4 loan associations and credit unions shall be set by the state  
5 board of finance, but in no case shall the rate of interest be  
6 less than one hundred percent of the asked price on United  
7 States treasury bills of the same maturity on the day of  
8 deposit. Any bank or savings and loan association that fails  
9 to pay the minimum rate of interest at the time of deposit  
10 provided for in this subsection for any respective deposit  
11 forfeits its right to an equitable share of that deposit under  
12 this section. If the deposit is part or all of the proceeds of  
13 a bond issue and the interest rate prescribed in this  
14 subsection materially exceeds the rate of interest of the  
15 bonds, the interest rate prescribed by this subsection shall be  
16 reduced on that deposit to an amount not materially exceeding  
17 the interest rate of the bonds if the bond issue would lose its  
18 tax-exempt status pursuant to the provisions of the Internal  
19 Revenue Code of 1986, as amended.

20 F. Public money in excess of that for which banks,  
21 savings and loan associations and credit unions within the  
22 geographical boundaries of the governmental unit have qualified  
23 may be deposited in qualified depositories in other areas  
24 within the state under the same requirements for payment of  
25 interest as if the money were deposited within the geographical

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1 boundaries of the governmental unit or may be invested as  
2 provided by law.

3 G. The department of finance and administration  
4 may monitor the deposits of public money by governmental  
5 units to assure full compliance with the provisions of this  
6 section."

7 SECTION 4. Section 22-8-40 NMSA 1978 (being Laws 1977,  
8 Chapter 136, Section 2, as amended) is amended to read:

9 "22-8-40. DEPOSIT OF PUBLIC SCHOOL FUNDS--  
10 DISTRIBUTION--INTEREST.--

11 A. All public money in the custody of school  
12 districts or state-chartered charter schools that have been  
13 designated as boards of finance shall be deposited in  
14 qualified depositories in accordance with the terms of this  
15 section.

16 B. Deposits of funds of the school district or  
17 state-chartered charter school may be made in noninterest-  
18 bearing checking accounts in one or more banks, savings and  
19 loan associations or credit unions, as long as the credit  
20 union deposits are insured by an agency of the United States,  
21 located within the geographical limits of the school  
22 district.

23 C. Deposits of funds of the school district or  
24 state-chartered charter school may be made in interest-  
25 bearing checking accounts, commonly known as "NOW" accounts,

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1 in one or more banks, savings and loan associations or credit  
2 unions, as long as the credit union deposits are insured by  
3 an agency of the United States, located within the  
4 geographical limits of the school district.

5 D. As much as practicable, public money placed in  
6 interest-bearing deposits, in banks and savings and loan  
7 associations, other than interest-bearing checking accounts  
8 as defined in Subsection C of this section, shall be  
9 equitably distributed among all banks and savings and loan  
10 associations having their main or [~~manned~~] staffed branch  
11 offices within the geographical boundaries of the school  
12 district that have qualified as public depositories by reason  
13 of insurance of the account by an agency of the United States  
14 or by depositing collateral security or by giving bond as  
15 provided by law in the proportion that each such bank's or  
16 savings and loan association's net worth bears to the total  
17 net worth of all banks and savings and loan associations  
18 having their main office or a [~~manned~~] staffed branch office  
19 within the geographical boundaries of the school district.

20 The net worth of the main office of a savings and loan  
21 association and its [~~manned~~] staffed branch offices within  
22 the geographical boundaries of a school district is the total  
23 net worth of the association multiplied by the percentage  
24 that deposits of the main office and the [~~manned~~] staffed  
25 branch offices located within the geographical boundaries of

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1 the school district are of the total deposits of the  
2 association. The net worth of each ~~[manned]~~ staffed branch  
3 office or aggregate of ~~[manned]~~ staffed branch offices of a  
4 savings and loan association located outside the geographical  
5 boundaries of the school district in which the main office is  
6 located is the total net worth of the association multiplied  
7 by the percentage that deposits of the branch or aggregate of  
8 branches located outside the geographical boundaries of the  
9 school district in which the main office is located are of  
10 the total deposits of the association. The director of the  
11 financial institutions division of the regulation and  
12 licensing department shall promulgate a formula for  
13 determining the net worth of banks' main offices and branches  
14 for the purposes of distribution of public money as provided  
15 for by this section. "Net worth" means assets less  
16 liabilities as reported by such banks and savings and loan  
17 associations on their most recent semiannual reports to the  
18 state or federal supervisory authority having jurisdiction.

19 E. Notwithstanding the provisions of Subsection D  
20 of this section, public money may be placed in interest-  
21 bearing deposits, other than interest-bearing checking  
22 accounts as defined in Subsection C of this section, at the  
23 discretion of the board of finance, in credit unions having  
24 their main or ~~[manned]~~ staffed branch offices within the  
25 geographical boundaries of the school district to the extent

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1 such deposits are insured by an agency of the United States.

2 F. The rate of interest for all public money  
3 deposited in interest-bearing accounts in banks, savings and  
4 loan associations and credit unions shall be set by the state  
5 board of finance, but in no case shall the rate of interest  
6 be less than one hundred percent of the asked price on United  
7 States treasury bills of the same maturity on the date of  
8 deposit. Any bank or savings and loan association that fails  
9 to pay the minimum rate of interest at the time of deposit  
10 provided for herein for any respective deposit forfeits its  
11 right to an equitable share of that deposit under this  
12 section. If the deposit is part or all of the proceeds of a  
13 bond issue and the interest rate prescribed in this  
14 subsection materially exceeds the rate of interest of the  
15 bonds, the interest rate prescribed by this subsection shall  
16 be reduced on the deposit to an amount not materially  
17 exceeding the interest rate of the bonds if the bond issue  
18 would lose its tax-exempt status under Section 103 of the  
19 United States Internal Revenue Code [~~of 1954~~], as amended.

20 G. Public money in excess of that for which banks  
21 and savings and loan associations within the geographical  
22 boundaries of the school district have qualified may be  
23 deposited in qualified depositories, including credit unions,  
24 in other areas within the state under the same requirements  
25 for payment of interest as if the money were deposited within

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1 the geographical boundaries of the school district.

2 H. The board of finance of the school district or  
3 state-chartered charter school may temporarily invest money  
4 held in demand deposits and not immediately needed for the  
5 operation of the school district or state-chartered charter  
6 school. Such temporary investments shall be made only in  
7 securities that are issued by the state or by the United  
8 States government, or by their departments or agencies, and  
9 that are either direct obligations of the state or the United  
10 States or are backed by the full faith and credit of those  
11 governments.

12 I. The department of finance and administration  
13 may monitor the deposits of public money by school districts  
14 or state-chartered charter schools to assure full compliance  
15 with the provisions of this section."