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SENATE BILL 387

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Pete Campos

AN ACT

**RELATING TO EDUCATIONAL RETIREMENT; AMENDING A CERTAIN SECTION
OF THE EDUCATIONAL RETIREMENT ACT PERTAINING TO INVESTMENT OF
THE EDUCATIONAL RETIREMENT FUND.**

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

**Section 1. Section 22-11-13 NMSA 1978 (being Laws 1967,
Chapter 16, Section 137, as amended) is amended to read:**

**"22-11-13. INVESTMENT OF THE FUND--INDEMNIFICATION OF
BOARD. --**

**A. The board is authorized to invest or reinvest
the fund and may invest the fund only in the following:**

**(1) obligations, including but not limited to
bills, bonds or notes of the United States, United States
government-sponsored enterprises or federal agency securities;**

(2) obligations, including but not limited to

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1 bills, bonds and notes of governments other than the United
2 States or their political subdivisions, agencies or
3 instrumentalities, and these may be denominated in foreign
4 currencies;

5 (3) obligations, including but not limited to
6 bonds or notes of a municipality or political subdivision of
7 the state that were issued pursuant to law; provided the
8 issuer has not, within ten years prior to making the
9 investment, been in default for more than three months in the
10 payment of any part of the principal or interest on any debt
11 evidenced by its bonds, notes or obligations; and provided the
12 bonds are city or county utility, or utility-district revenue
13 bonds with the revenue of such utility, other than for payment
14 of operation and maintenance expenses, pledged wholly to
15 payment of the interest on and the principal of such
16 indebtedness, and the utility project has been completely
17 self-supporting for a period of five years preceding the date
18 of the investment;

19 (4) contracts for the present purchase and
20 resale at a specified time in the future, not to exceed one
21 year, of specific securities at specified prices at a price
22 differential representing the interest income to be earned by
23 the board. No such contract shall be entered into unless the
24 contract is fully secured by obligations of the United States,
25 or other securities backed by the United States, having a

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1 market value of at least one hundred two percent of the amount
2 of the contract. The collateral required in this section
3 shall be delivered to the state fiscal agent or his designee
4 contemporaneously with the transfer of funds or delivery of
5 the securities, at the earliest time industry practice
6 permits, but in all cases settlement shall be on a same-day
7 basis. No such contract shall be entered into unless the
8 contracting bank, brokerage firm or recognized institutional
9 investor has a net worth in excess of five hundred million
10 dollars (\$500,000,000);

11 (5) obligations, including but not limited to
12 bonds, notes, ~~[or commercial paper of any corporation]~~
13 debentures, instruments, conditional sales agreements,
14 securities or other evidence of indebtedness of any
15 corporation, partnership or trust organized within the United
16 States; preferred stock or common stock or any security
17 convertible to common stock of any corporation, partnership or
18 trust organized within the United States whose securities are
19 listed on at least one national stock exchange or on the
20 N. A. S. D. national market or American depositary receipts of
21 any corporation organized outside the United States whose
22 securities are listed on at least one national stock exchange
23 or on the N. A. S. D. national market; provided [~~that the~~
24 ~~corporation shall have a minimum net worth of twenty-five~~
25 ~~million dollars (\$25,000,000); and provided]~~ that the fund

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1 shall not at any one time own more than ten percent of the
2 voting stock of a company;

3 (6) prime bankers' acceptances issued by
4 money center banks;

5 (7) obligations, including but not limited to
6 bonds, notes, ~~[or commercial paper of any corporation]~~
7 debentures, instruments, conditional sales agreements,
8 securities or other evidence of indebtedness of any
9 corporation, partnership or trust organized outside of the
10 United States, and these may be denominated in foreign
11 currencies; preferred stock or common stock or any security
12 convertible to common stock of any corporation, partnership or
13 trust organized outside of the United States whose securities
14 are listed on at least one national or foreign stock exchange,
15 and these may be denominated in foreign currencies; provided
16 ~~[that the corporation shall have a minimum net worth of~~
17 ~~twenty-five million dollars (\$25,000,000); and provided]~~ that
18 the fund shall not at any one time own more than ten percent
19 of the voting stock of a company;

20 (8) currency transactions, including spot or
21 cash basis currency transactions, forward currency contracts
22 and buying or selling options or futures on foreign
23 currencies, but only for the purposes of hedging foreign
24 currency risk and not for speculation;

25 (9) stocks or shares of a diversified

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1 investment company registered under the Investment Company Act
2 of 1940, as amended, which invests primarily in United States
3 or non-United States fixed income securities, equity
4 securities or short-term debt instruments pursuant to
5 Paragraphs (1), (2), (4), (5) and (7) of this subsection,
6 provided that the investment company has total assets under
7 management of at least one hundred million dollars
8 (\$100,000,000); individual, common or collective trust funds
9 of banks or trust companies, which invest primarily in United
10 States or non-United States fixed income securities, equity
11 securities or short-term debt instruments pursuant to
12 Paragraphs (1), (2), (4), (5) and (7) of this subsection,
13 provided that the investment manager has assets under
14 management of at least one hundred million dollars
15 (\$100,000,000); the board may allow reasonable administrative
16 and investment expenses to be paid directly from the income or
17 assets of these investments; or

18 (10) industrial revenue bonds issued pursuant
19 to the Industrial Revenue Bond Act, where both the principal
20 and interest of the bonds are fully and unconditionally
21 guaranteed by a lease agreement executed by a corporation
22 organized and operating within the United States [~~and which~~
23 ~~has net assets of at least twenty-five million dollars~~
24 ~~(\$25,000,000)] and has issued securities traded on one or more
25 national stock exchanges and where the senior securities of~~

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1 the guaranteeing corporation would have the equivalent of a
2 BAA rating.

3 B. The board or its designated agent may enter
4 into contracts for the temporary exchange of securities for
5 the use by broker-dealers, banks or other recognized
6 institutional investors, for periods not to exceed one year,
7 for a specified fee or consideration. No such contract shall
8 be entered into unless the contract is fully secured by a
9 collateralized, irrevocable letter of credit running to the
10 board, cash or equivalent collateral of at least one hundred
11 two percent of the market value of the securities plus accrued
12 interest temporarily exchanged. This collateral shall be
13 delivered to the state fiscal agent or its designee
14 contemporaneously with the transfer of funds or delivery of
15 the securities. Such contract may authorize the board to
16 invest cash collateral in instruments or securities that are
17 authorized fund investments and may authorize payment of a fee
18 from the fund or from income generated by the investment of
19 cash collateral to the borrower of securities providing cash
20 as collateral. The board may apportion income derived from
21 the investment of cash collateral to pay its agent in
22 securities lending transactions.

23 C. Commissions paid for the purchase or sale of
24 any securities pursuant to the provisions of the Educational
25 Retirement Act shall not exceed brokerage rates prescribed and

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1 approved by national stock exchanges or by industry practice.

2 D. Investment of the fund shall be made with the
3 exercise of that degree of judgment and care, under the
4 circumstances then prevailing, which men of prudence,
5 discretion and intelligence exercise in the management of
6 their own affairs, not for speculation but for investment,
7 considering the probable safety of their capital as well as
8 the probable income to be derived.

9 E. Securities purchased for the fund shall be held
10 in the custody of the state treasurer. At the direction of
11 the board, the state treasurer shall deposit with a bank or
12 trust company the securities for safekeeping or servicing.

13 F. The board may consult with the state investment
14 council or the state investment officer; may request from the
15 state investment council or the state investment officer any
16 information, advice or recommendations with respect to
17 investment of the fund; may utilize the services of the state
18 investment council or the state investment officer; and may
19 act upon any advice or recommendations of the state investment
20 council or the state investment officer. The state investment
21 council or the state investment officer shall render
22 investment advisory services to the board upon request and
23 without expense to the board. The board may employ investment
24 advisory services and pay reasonable compensation from the
25 fund for the services. The board may also employ investment

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1 management services and pay reasonable compensation from the
2 fund for the services to make investment decisions on behalf
3 of the board, within the investment objectives, policies and
4 operating guidelines as directed by the board to the
5 investment manager.

6 G. Members of the board, jointly and individually,
7 shall be indemnified from the fund by the state from all
8 claims, demands, suits, actions, damages, judgments, costs,
9 charges and expenses, including court costs and attorneys'
10 fees, and against all liability, losses and damages of any
11 nature whatsoever that members shall or may at any time
12 sustain by reason of any decision made in the performance of
13 their duties pursuant to this section. "