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SENATE BILL 153

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Phil A. Griego

AN ACT

RELATING TO REAL ESTATE; EXPANDING INVESTMENT OPPORTUNITIES FOR
A CERTAIN CAPITAL FUND IN THE LAND TITLE TRUST FUND; REQUIRING
CONSIDERATION OF CERTAIN INVESTMENT RECOMMENDATIONS; EXPANDING
THE MEMBERSHIP OF THE LAND TITLE TRUST FUND ADVISORY COMMITTEE.

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

Section 1. Section 58-28-4 NMSA 1978 (being Laws 1997,
Chapter 118, Section 4, as amended) is amended to read:

"58-28-4. TRUST ACCOUNTS-- ESCROW ACCOUNTS-- POOLED
INTEREST-BEARING TRANSACTION ACCOUNTS-- DISPOSITION OF EARNED
INTEREST ON CERTAIN ACCOUNTS.--

A. A title company that maintains one or more trust
accounts or escrow accounts into which customer funds are
deposited for use in the purchase, sale or financing of real
property located in New Mexico may maintain one or more pooled

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1 interest-bearing transaction accounts and may deposit customer
2 funds into those accounts, except for funds required to be
3 deposited into interest-bearing accounts or investments under
4 instructions from one or more of the parties to a transaction
5 that provide for the payment of interest to be earned on the
6 deposited funds to a person other than the title company. A
7 pooled interest-bearing transaction account established
8 pursuant to the provisions of this section shall be maintained
9 in the name of the title company, but the trustee shall be
10 named and shown as the beneficial owner of the account income
11 or interest. A title company maintaining one or more pooled
12 interest-bearing transaction accounts shall not be paid or
13 receive any interest earned on funds deposited in the accounts
14 except for the purpose of remitting net earned interest to the
15 trustee pursuant to the provisions of this section.

16 B. The interest earned on customer funds deposited
17 in a pooled interest-bearing transaction account pursuant to
18 the requirements of Subsection A of this section, net of any
19 service charges and fees that a depository institution charges
20 to regular, non-title company depositors and net of any
21 reasonable charge for preparation and transmittal of any
22 required report pursuant to the provisions of Subsection F of
23 this section, shall be remitted monthly or quarterly either
24 directly to the fund or to the title company for its remittance
25 to the fund. Alternatively, the depository institution may

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1 credit the title company account with the net interest earned
2 either monthly or quarterly. Interest accrued after deducting
3 the allowable charges and fees shall be treated as interest
4 earned by the trustee and reported as such by the depository
5 institution.

6 C. The provisions of this section shall not change
7 existing duties or obligations of a title company under other
8 laws to safeguard and account for funds held for customers.

9 D. Funds in each pooled interest-bearing
10 transaction account shall be subject to withdrawal upon request
11 and without delay, subject only to the notice period the
12 depository institution is required to observe by law or
13 ~~[regulation]~~ rule.

14 E. The rate of interest payable on a pooled
15 interest-bearing transaction account shall not be less than the
16 rate customarily paid by the depository institution to regular,
17 non-title company depositors for similar accounts. Interest
18 shall be computed in accordance with the depository
19 institution's standard accounting practice. Higher rates
20 offered by the depository institution to customers whose
21 deposits exceed certain time or quantity minima, such as those
22 offered in the form of certificates of deposit, may be obtained
23 by the title company on some or all of the deposited funds so
24 long as there is no impairment of the right to withdraw or
25 transfer principal, subject only to the notice period the

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1 depository institution is required to observe by law or
2 [~~regulation~~] rule.

3 F. A depository institution or title company making
4 a remittance of interest to the fund shall at the time of the
5 remittance transmit a report to the trustee for each account
6 from which remittance is made showing:

7 (1) the name of the title company maintaining
8 the account from which remittance is made;

9 (2) the rate of interest used to compute the
10 earned interest and the amount of earned interest;

11 (3) the amount, if any, of depository
12 institution service charges and fees deducted and any charge
13 for the preparation and transmittal of the report; and

14 (4) the account balance as of the ending date
15 of the reporting period.

16 G. If the depository institution remits to the
17 title company or credits the title company account, it shall
18 make the remittance or credit no later than ten days after the
19 statement cutoff for that account. The title company shall
20 remit to the fund and shall send the report with the remittance
21 no later than thirty days after receipt of the remittance or
22 credit by the depository institution.

23 H. Remittances to the fund shall be made at least
24 quarterly, no later than ten days after the statement cutoff
25 for that account if made by the depository institution and no

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1 later than thirty days after receipt of remittance or credit
2 from the depository institution if made by the title company.

3 I. The division shall, after considering
4 recommendations of the trustee, adopt and promulgate rules [~~and~~
5 ~~regulations~~] regarding the obligations of depository
6 institutions pursuant to the provisions of the Land Title Trust
7 Fund Act and the Low-Income Housing Trust Act. "

8 Section 2. Section 58-28-5 NMSA 1978 (being Laws 1997,
9 Chapter 118, Section 5) is amended to read:

10 "58-28-5. USE OF MONEY--ELIGIBLE ACTIVITIES. --

11 A. Money from the fund and other sources may be
12 used to finance in whole or in part any loans or grant projects
13 that will provide housing for low-income persons and for other
14 uses specified in this section. Money deposited into the fund
15 may be used annually as follows:

16 [~~A.-~~] (1) no more than [~~seven~~] five percent of
17 the fund shall be used for expenses of administering the fund;

18 [~~B.-~~] (2) no less than twenty percent of the
19 fund shall be invested in a permanent capital fund, the
20 interest on which may be used for purposes specified in this
21 section;

22 [~~C.-~~] (3) no less than fifty percent of the
23 fund shall be allocated to eligible organizations to make
24 housing more accessible to low-income persons; and

25 [~~D.-~~] (4) the remaining balance may be

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1 allocated to eligible organizations for other housing-related
2 programs for the benefit of the public as specifically approved
3 by the trustee from time to time.

4 B. Money in the capital fund authorized in
5 Paragraph (2) of Subsection A of this section may be invested
6 in fully amortizing interest-bearing mortgages secured by real
7 property in New Mexico, the interest on which may be used for
8 purposes specified in this section."

9 Section 3. Section 58-28-8 NMSA 1978 (being Laws 1997,
10 Chapter 118, Section 8) is amended to read:

11 "58-28-8. LAND TITLE TRUST FUND ADVISORY COMMITTEE
12 CREATED- - FUNCTIONS. - -

13 A. The "land title trust fund advisory committee"
14 is created. The committee shall consist of [~~seven~~] nine
15 persons:

16 (1) the chairman of the trustee or his
17 designee, who shall serve as chairman of the committee;

18 (2) two representatives of the land title
19 industry appointed by the governor;

20 (3) one representative of the banking industry
21 and [~~one representative~~] two representatives of the real estate
22 industry appointed by the president pro tempore of the senate;
23 and

24 (4) one representative of the mortgage lending
25 industry and [~~one representative~~] two representatives of the

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1 real estate industry appointed by the speaker of the house of
2 representatives.

3 B. ~~[Of the first committee members appointed, two~~
4 ~~shall be appointed for terms of five years, two shall be~~
5 ~~appointed for terms of four years and two shall be appointed~~
6 ~~for terms of three years. Thereafter]~~ Of the members from the
7 real estate industry appointed to the positions created in
8 2003, the member appointed by the speaker of the house of
9 representatives shall be appointed to a term of five years and
10 the member appointed by the president pro tempore of the senate
11 shall be appointed to an initial term of four years.

12 Thereafter appointed members shall be appointed for terms of
13 five years. Members shall serve at the pleasure of their
14 respective appointing authorities, and vacancies shall be
15 filled by the appropriate appointing authority. Any member of
16 the committee shall be eligible for reappointment.

17 C. The committee shall be advisory to the trustee
18 and shall be subject to oversight by the Mortgage Finance
19 Authority Act oversight committee.

20 D. The committee shall review all project
21 applications and make recommendations to the trustee for
22 funding them. The committee shall not be involved in or
23 advisory to the trustee in matters relating to the investment
24 of the fund.

25 E. The committee shall adopt and promulgate rules

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and regulations regarding:

(1) the time, place and procedures of committee meetings;

(2) the procedures for the review of and standards for recommending applications for loans or grant projects; and

(3) the obligations of title companies pursuant to the provisions of the Land Title Trust Fund Act. "