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SENATE BILL 316

**46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004**

INTRODUCED BY

John Arthur Smith

AN ACT

RELATING TO THE INVESTMENT OF PUBLIC MONEY; INCREASING THE  
PERCENTAGE OF THE LAND GRANT PERMANENT FUNDS AND THE SEVERANCE  
TAX PERMANENT FUND THAT MAY BE INVESTED IN REAL ESTATE;  
EXPANDING THE TYPE OF ALLOWABLE REAL ESTATE INVESTMENTS;  
ALLOWING, UNDER CERTAIN CIRCUMSTANCES, THE LAND GRANT PERMANENT  
FUNDS AND THE SEVERANCE TAX PERMANENT FUND TO BE INVESTED IN  
DERIVATIVES, SHORT SELLING ARRANGEMENTS AND HEDGE FUNDS.

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

Section 1. Section 6-8-9 NMSA 1978 (being Laws 1957,  
Chapter 179, Section 9, as amended) is amended to read:

"6-8-9. SECURITIES AND INVESTMENT.--

A. Money made available from the land grant  
permanent funds for investment for a period in excess of one  
year may be invested in the following classes of securities and

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1 investments:

2 (1) bonds, notes or other obligations of the  
3 United States government, its agencies, government-sponsored  
4 enterprises, corporations or instrumentalities and that portion  
5 of bonds, notes or other obligations guaranteed as to principal  
6 and interest and issued by the United States government, its  
7 agencies, government-sponsored enterprises, corporations or  
8 instrumentalities or issued pursuant to acts or programs  
9 authorized by the United States government;

10 (2) bonds, notes, debentures and other  
11 obligations issued by the state of New Mexico or a municipality  
12 or other political subdivision of the state that are secured by  
13 an investment grade bond rating from a national rating service,  
14 pledged revenue or other collateral or insurance necessary to  
15 satisfy the standard of prudence set forth in Section 6-8-10  
16 NMSA 1978;

17 (3) bonds, notes, debentures, instruments,  
18 conditional sales agreements, securities or other evidences of  
19 indebtedness of any corporation, partnership or trust organized  
20 and operating within the United States rated not less than Baa  
21 or BBB or the equivalent by a national rating service;

22 (4) bonds, notes, debentures, instruments,  
23 conditional sales agreements, securities or other evidences of  
24 indebtedness rated not less than BB or B or the national  
25 association of insurance commissioners' equivalent by a

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1 national rating service. An investment made under this  
2 paragraph shall be in publicly traded debt issues with an  
3 outstanding par value of at least one hundred million dollars  
4 (\$100,000,000) and issued by a corporation, partnership or  
5 trust listed on a national exchange and organized and operating  
6 within the United States; provided that investments made  
7 pursuant to this paragraph shall not exceed three percent of  
8 the market value of the land grant permanent funds, calculated  
9 at the time of investment;

10 (5) notes or obligations securing loans or  
11 participation in loans to business concerns or other  
12 organizations that are obligated to use the loan proceeds  
13 within New Mexico, to the extent that loans are secured by  
14 first mortgages on real estate located in New Mexico and are  
15 further secured by an assignment of rentals, the payment of  
16 which is fully guaranteed by the United States in an amount  
17 sufficient to pay all principal and interest on the mortgage;

18 (6) common and preferred stocks and  
19 convertible issues of any corporation; provided that it has  
20 securities listed on one or more national stock exchanges or  
21 included in a nationally recognized list of stocks; and  
22 provided further that the fund shall not own more than five  
23 percent of the voting stock of any company;

24 (7) real estate investments, including real  
25 property and undivided interests in real property, debt

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1 instruments secured by [~~first~~] liens on real property or  
2 limited partnership interests; provided that the total value of  
3 investments made under this paragraph shall not exceed [~~three~~]  
4 ten percent of the market value of the land grant permanent  
5 funds, calculated at the time of investment;

6 (8) securities of non-United States  
7 governmental, quasi-governmental, partnership, trust or  
8 corporate entities, and these may be denominated in foreign  
9 currencies; provided:

10 (a) aggregate non-United States  
11 investments shall not exceed fifteen percent of the book value  
12 of the land grant permanent funds;

13 (b) for non-United States stocks and  
14 non-United States bonds and notes, issues permitted for  
15 purchase shall be limited to those issues traded on a national  
16 stock exchange or included in a nationally recognized list of  
17 stocks or bonds;

18 (c) currency contracts may be used for  
19 investing in non-United States securities only for the purpose  
20 of hedging foreign currency risk and not for speculation;

21 (d) the investment management services  
22 of a trust company or national bank exercising trust powers or  
23 of an investment counseling firm may be employed; and

24 (e) reasonable compensation for  
25 investment management services and other administrative and

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1 investment expenses related to these investments shall be paid  
2 directly from the assets of the funds, subject to budgeting and  
3 appropriation by the legislature; ~~and~~

4 (9) stocks or shares of a diversified  
5 investment company registered under the federal Investment  
6 Company Act of 1940, as amended, and listed securities of long-  
7 term unit investment trusts or individual, common or collective  
8 trust funds of banks or trust companies that invest primarily  
9 in equity securities authorized in Paragraphs (6) and (8) of  
10 this subsection; provided that the investment company has total  
11 assets under management of at least one hundred million dollars  
12 (\$100,000,000); and provided further that the council may allow  
13 reasonable administrative and investment expenses to be paid  
14 directly from the assets derived from these investments,  
15 subject to budgeting and appropriation by the legislature;

16 (10) derivatives, including forward contracts,  
17 futures contracts, swap contracts and option-based contracts;  
18 provided that:

19 (a) the council has approved a  
20 derivative investment policy that ensures: 1) appropriate  
21 systems are in place to mitigate risks; 2) the personnel  
22 implementing the policy have the expertise to appropriately  
23 identify, measure, monitor and control the risk-return  
24 liquidity characteristics in using derivative strategies; and  
25 3) the risk characteristics of a derivative investment are

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1 appropriate for and consistent with the investment objectives  
2 of the land grant permanent funds;

3 (b) investments in derivatives shall be  
4 used only for: 1) hedging, including cross-hedging of currency  
5 exposures, intended to reduce clearly defined risks to which  
6 another investment of the land grant permanent funds is  
7 exposed; 2) replicating the risk-return profile of an asset or  
8 asset class but only if the land grant permanent funds may be  
9 invested in the underlying assets themselves; or 3) managing  
10 country or asset allocation exposure but only if the land grant  
11 permanent funds may be invested in the underlying assets  
12 themselves; and

13 (c) investments in derivatives shall not  
14 be used to increase exposure to an asset or asset class beyond  
15 that which is otherwise allowed for that asset or asset class;

16 (11) short selling arrangements; provided that  
17 the short sale is made for the purpose of hedging investment  
18 exposures already present in the land grant permanent funds;  
19 and

20 (12) hedge funds that invest primarily in  
21 publicly traded securities and derivatives and use long and  
22 short positions and leverage to reduce market exposure in order  
23 to profit from security selection; provided that:

24 (a) the hedge fund advisors shall be  
25 registered under the federal Investment Company Act of 1940;

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1 and

2 (b) investments made pursuant to this  
3 paragraph shall not exceed ten percent of the market value of  
4 the land grant permanent funds, calculated at the time of  
5 investment.

6 B. Not more than sixty-five percent of the book  
7 value of the land grant permanent funds shall be invested at  
8 any given time in:

9 (1) securities described in Paragraphs (6),  
10 (8) and (9) of Subsection A of this section; and

11 (2) investments described in Paragraphs (10),  
12 (11) and (12) of Subsection A of this section in which the  
13 underlying asset or asset class is a security described in  
14 Paragraph (6), (8) or (9) of Subsection A of this section.

15 C. No more than ten percent of the book value of  
16 the land grant permanent funds shall be invested at any given  
17 time in securities described in Paragraph (3) of Subsection A  
18 of this section that are rated Baa or BBB.

19 D. Assets of the land grant permanent funds may be  
20 combined for investment in common pooled funds to effectuate  
21 efficient management.

22 [~~G.~~] E. Commissions paid for the purchase and sale  
23 of any security shall not exceed brokerage rates prescribed and  
24 approved by national stock exchanges or by industry practice."

25 Section 2. Section 7-27-5.1 NMSA 1978 (being Laws 1983,

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1 Chapter 306, Section 8, as amended) is amended to read:

2 "7-27-5.1. MARKET RATE INVESTMENTS.--

3 A. Money made available from the severance tax  
4 permanent fund for investment for a period in excess of one  
5 year in market rate investments may be invested in the  
6 following classes of securities and investments:

7 (1) bonds, notes or other obligations of the  
8 United States government, its agencies, government-sponsored  
9 enterprises, corporations or instrumentalities and that portion  
10 of bonds, notes or other obligations guaranteed as to principal  
11 and interest and issued by the United States government, its  
12 agencies, government-sponsored enterprises, corporations or  
13 instrumentalities or issued pursuant to acts or programs  
14 authorized by the United States government;

15 (2) bonds, notes, debentures and other  
16 obligations issued by the state of New Mexico or a municipality  
17 or other political subdivision of the state that are secured by  
18 an investment grade bond rating from a national rating service,  
19 pledged revenue or other collateral or insurance necessary to  
20 satisfy the standard of prudence set forth in Section 6-8-10  
21 NMSA 1978;

22 (3) bonds, notes, debentures, instruments,  
23 conditional sales agreements, securities or other evidences of  
24 indebtedness of any corporation, partnership or trust organized  
25 and operating within the United States rated not less than Baa

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1 or BBB or the equivalent by a national rating service;

2 (4) bonds, notes, debentures, instruments,  
3 conditional sales agreements, securities or other evidences of  
4 indebtedness rated not less than BB or B or the national  
5 association of insurance commissioners' equivalent by a  
6 national rating service. An investment made under this  
7 paragraph shall be in publicly traded debt issues with an  
8 outstanding par value of at least one hundred million dollars  
9 (\$100,000,000) and issued by a corporation, partnership or  
10 trust listed on a national exchange and organized and operating  
11 within the United States; provided that investments made  
12 pursuant to this paragraph shall not exceed three percent of  
13 the market value of the severance tax permanent fund,  
14 calculated at the time of investment;

15 (5) notes or obligations securing loans or  
16 participation in loans to business concerns or other  
17 organizations that are obligated to use the loan proceeds  
18 within New Mexico, to the extent that loans are secured by  
19 first mortgages on real estate located in New Mexico and are  
20 further secured by an assignment of rentals, the payment of  
21 which is fully guaranteed by the United States in an amount  
22 sufficient to pay all principal and interest on the mortgage;

23 (6) common and preferred stocks and  
24 convertible issues of any corporation; provided that it has  
25 securities listed on one or more national stock exchanges or

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1 included in a nationally recognized list of stocks; and  
2 provided further that the fund shall not own more than five  
3 percent of the voting stock of any company;

4 (7) real estate investments, including real  
5 property and undivided interests in real property, debt  
6 instruments secured by [~~first~~] liens on real property, or  
7 limited partnership interests; provided that the total value of  
8 investments made under this paragraph shall not exceed [~~three~~  
9 ten] percent of the market value of the severance tax permanent  
10 fund, calculated at the time of investment;

11 (8) securities of non-United States  
12 governmental, quasi-governmental, partnership, trust or  
13 corporate entities, and these may be denominated in foreign  
14 currencies; provided:

15 (a) aggregate non-United States  
16 investments shall not exceed fifteen percent of the book value  
17 of the severance tax permanent fund;

18 (b) for non-United States stocks and  
19 non-United States bonds and notes, issues permitted for  
20 purchase shall be limited to those issues traded on a national  
21 stock exchange or included in a nationally recognized list of  
22 stocks or bonds;

23 (c) currency contracts may be used for  
24 investing in non-United States securities only for the purpose  
25 of hedging foreign currency risk and not for speculation;

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1 (d) the investment management services  
2 of a trust company or national bank exercising trust powers or  
3 of an investment counseling firm may be employed; and

4 (e) reasonable compensation for  
5 investment management services and other administrative and  
6 investment expenses related to these investments shall be paid  
7 directly from the assets of the fund, subject to budgeting and  
8 appropriation by the legislature;

9 (9) stocks or shares of a diversified  
10 investment company registered under the federal Investment  
11 Company Act of 1940, as amended, and listed securities of long-  
12 term unit investment trusts or individual, common or collective  
13 trust funds of banks or trust companies that invest primarily  
14 in equity securities authorized in Paragraphs (6) and (8) of  
15 this subsection; provided that the investment company has total  
16 assets under management of at least one hundred million dollars  
17 (\$100,000,000); and provided further that the council may allow  
18 reasonable administrative and investment expenses to be paid  
19 directly from the assets derived from these investments,  
20 subject to budgeting and appropriation by the legislature;

21 [~~and~~]

22 (10) participation interests in New Mexico  
23 real-property-related business loans. The actual amount  
24 invested under this paragraph shall not exceed ten percent of  
25 the severance tax permanent fund and shall be included in any

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1 minimum amount of severance tax permanent fund investments  
2 required to be placed in New Mexico certificates of deposit.  
3 Investments authorized in this paragraph are subject to the  
4 following:

5 (a) the state investment officer may  
6 purchase from eligible institutions a participation interest of  
7 up to eighty percent in any loan secured by a first mortgage or  
8 a deed of trust on the real property located in New Mexico of  
9 an eligible business entity, or its subsidiary, that is  
10 operating or shall use loan proceeds to commence operations  
11 within New Mexico plus any other guarantees or collateral that  
12 may be judged by the eligible institution or the state  
13 investment officer to be prudent. To be eligible for  
14 investment the following minimum requirements shall be met: 1)  
15 the loan proceeds shall be used exclusively for the purpose of  
16 expanding or establishing businesses in New Mexico, including  
17 the refinancing of such businesses for expansion purposes only.  
18 If a portion of the loan proceeds were used for refinancing or  
19 repaying an existing loan and payment of principal and interest  
20 to the state has not been made within ninety days from the due  
21 date, unless extended pursuant to agreement between the  
22 originating institution and the state investment officer, the  
23 originating institution shall buy back the state's  
24 participation interest in the loan and begin foreclosure  
25 proceedings; 2) eligible business entities shall not include

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1 public utilities or financial institutions or shopping centers,  
2 apartment buildings or other such passive investments; 3) the  
3 minimum loan amount shall be two hundred fifty thousand dollars  
4 (\$250,000) and may be met by packaging up to ten separate loans  
5 satisfying the requirements of this paragraph. The maximum  
6 loan amount shall be two million dollars (\$2,000,000); 4) the  
7 loan maturity shall be not less than five years or more than  
8 thirty years; 5) the maximum loan-to-value ratio shall be  
9 seventy-five percent and based on current appraisal of the real  
10 property by an appraiser who is licensed or certified in New  
11 Mexico and approved by the state investment officer, which  
12 shall be made not more than one hundred eighty days from the  
13 loan origination date; 6) the interest rate of the loan shall  
14 be fixed for five years and shall be adjusted at every fifth  
15 anniversary of the note to the rate specified in Item 7) of  
16 this subparagraph; 7) the yield on the state's participation  
17 interest shall in no case be less than the greater of the then-  
18 prevailing yield on United States treasury securities of five-  
19 year maturity plus two and one-half percent or the yield  
20 received by the lending institution calculated exclusive of  
21 servicing fees; 8) if payment of principal or interest has not  
22 been made within one hundred eighty days from the due date,  
23 unless extended pursuant to agreement between the originating  
24 institution and the state investment officer, the originating  
25 institution shall buy back the state's participation interest

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1 in the loan, substitute another qualifying loan or begin  
2 foreclosure proceedings; and 9) if foreclosure proceedings are  
3 commenced, the state and the originating institution shall  
4 share in proportion to their participation interest, as  
5 provided in this subparagraph, in the legal and other  
6 foreclosure expenses and in any loss incurred as a result of a  
7 foreclosure sale;

8 (b) a standardized participation  
9 agreement, the form of which shall be approved by the attorney  
10 general's office, shall be executed between the investment  
11 office and each eligible originating institution. The  
12 participation agreement shall provide that the originating  
13 institution shall not assign its interest in any loan covered  
14 by the agreement without the prior written consent of the state  
15 investment officer;

16 (c) a formal forward commitment program  
17 may be instituted by the state investment officer with the  
18 approval of the council;

19 (d) the council shall adopt regulations:  
20 1) defining passive investments; 2) establishing underwriting  
21 guidelines; 3) ensuring diversification across a variety of  
22 types of collateral, types of businesses and regions of the  
23 state; and 4) providing for the review by the state investment  
24 officer of servicing and other fees that may be charged by the  
25 eligible institution;

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1 (e) eligible institutions include banks,  
2 savings and loan associations and credit unions operating in  
3 the state; and

4 (f) real property is defined as land and  
5 attached buildings, but excludes all interests that may be  
6 secured by a security interest under Article 9 of the Uniform  
7 Commercial Code, and mineral resource values;

8 (ll) derivatives, including forward contracts,  
9 futures contracts, swap contracts and option-based contracts;  
10 provided that:

11 (a) the council has approved a  
12 derivative investment policy that ensures: 1) appropriate  
13 systems are in place to mitigate risks; 2) the personnel  
14 implementing the policy have the expertise to appropriately  
15 identify, measure, monitor and control the risk-return  
16 liquidity characteristics in using derivative strategies; and  
17 3) the risk characteristics of a derivative investment are  
18 appropriate for and consistent with the investment objectives  
19 of the severance tax permanent fund;

20 (b) investments in derivatives shall be  
21 used only for: 1) hedging, including cross-hedging of currency  
22 exposures, intended to reduce clearly defined risks to which  
23 another investment of the severance tax permanent fund is  
24 exposed; 2) replicating the risk-return profile of an asset or  
25 asset class but only if the severance tax permanent fund may be

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1 invested in the underlying assets themselves; or 3) managing  
2 country or asset allocation exposure but only if the severance  
3 tax permanent fund may be invested in the underlying assets  
4 themselves; and

5 (c) investments in derivatives shall not  
6 be used to increase exposure to an asset or asset class beyond  
7 that which is otherwise allowed for that asset or asset class;

8 (12) short selling arrangements; provided that  
9 the short sale is made for the purpose of hedging investment  
10 exposures already present in the severance tax permanent fund;  
11 and

12 (13) hedge funds that invest primarily in  
13 publicly traded securities and derivatives and use long and  
14 short positions and leverage to reduce market exposure in order  
15 to profit from security selection; provided that:

16 (a) the hedge fund advisors shall be  
17 registered under the federal Investment Company Act of 1940;  
18 and

19 (b) investments made pursuant to this  
20 paragraph shall not exceed ten percent of the market value of  
21 the severance tax permanent fund, calculated at the time of  
22 investment.

23 B. Not more than sixty-five percent of the book  
24 value of the severance tax permanent fund shall be invested at  
25 any given time in:

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1                   (1) securities described in Paragraphs (6),  
2 (8) and (9) of Subsection A of this section; and

3                   (2) investments described in Paragraphs (11),  
4 (12) and (13) of Subsection A of this section in which the  
5 underlying asset or asset class is a security described in  
6 Paragraph (6), (8) or (9) of Subsection A of this section.

7                   C. No more than ten percent of the book value of  
8 the severance tax permanent fund shall be invested at any given  
9 time in securities described in Paragraph (3) of Subsection A  
10 of this section that are rated Baa or BBB.

11                   D. Assets of the severance tax permanent fund may  
12 be combined for investment in common pooled funds to effectuate  
13 efficient management.

14                   ~~[G-]~~ E. Commissions paid for the purchase and sale  
15 of any security shall not exceed brokerage rates prescribed and  
16 approved by national stock exchanges or by industry practice."