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SENATE BILL 141

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Shannon Robinson

AN ACT

RELATING TO STATE FINANCE; ALLOWING DIRECT INVESTMENT OF THE SEVERANCE TAX PERMANENT FUND IN NEW MEXICO OWNED AND OPERATED FINE ART AND FINE MUSICAL INSTRUMENT PRIVATE EQUITY FUNDS; PROVIDING AND QUALIFYING LIMITATIONS; DECLARING AN EMERGENCY.

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

Section 1. A new section of Chapter 7, Article 27 NMSA 1978 is enacted to read:

"~~[NEW MATERIAL]~~ INVESTMENT IN FINE ART AND FINE MUSICAL INSTRUMENT PRIVATE EQUITY FUNDS OWNED AND OPERATED IN NEW MEXICO. --

A. No more than three percent of the market value of the severance tax permanent fund may be invested in New Mexico fine art and fine musical instrument private equity funds.

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1 B. Not more than sixty million dollars
2 (\$60,000,000) of the amount authorized for investment pursuant
3 to Subsection A of this section shall be invested in a fine art
4 private equity fund. Not more than forty millions dollars
5 (\$40,000,000) of the amount authorized for investment pursuant
6 to Subsection A of this section shall be invested in a fine
7 musical instrument private equity fund.

8 C. The state investment officer shall make
9 investments pursuant to this section only upon approval of the
10 state investment council after a review by the private equity
11 investment advisory committee. The state investment officer
12 may make an investment pursuant to this section only in a New
13 Mexico fine art or fine musical instrument private equity fund
14 that:

15 (1) is domiciled in New Mexico;

16 (2) is a reputable investment company with
17 sufficient expertise in fine art or fine musical instruments
18 and that consents to managing the fund with oversight by the
19 university of New Mexico Anderson school of management's
20 program for creativity and enterprise in concert with the
21 university of New Mexico college of fine arts;

22 (3) has a majority of its employees domiciled
23 in New Mexico; and

24 (4) meets the following conditions:

25 (a) representations and warranties made

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1 in the fund's private equity offering memorandum, its
2 subscription agreement and any other offering document have
3 been approved by the state investment council;

4 (b) the fund manager has provided to the
5 state investment council audited statements on a quarterly
6 basis reflecting the activities of the fund; and

7 (c) all bank accounts of the fund
8 manager, whether used for operations or asset acquisition,
9 reside in banking institutions operating in New Mexico.

10 D. As used in this section:

11 (1) "New Mexico fine art private equity fund"
12 means any limited partnership, limited liability company or
13 corporation organized and operating in New Mexico that:

14 (a) has as its primary business activity
15 the use of funds to acquire fine art, which is defined as art
16 that has demonstrated that it has: 1) a secondary market; 2)
17 either been sold at auction or been produced by an artist whose
18 other work has sold at auction; and 3) a value not less than
19 fifty thousand dollars (\$50,000) or more than five million
20 dollars (\$5,000,000);

21 (b) will hold the fine art acquisitions
22 for sale opportunistically, not later than ten years from the
23 date of acquisition, with the objective of capital
24 appreciation; and

25 (c) accepts investments only from

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1 accredited investors as that term is defined in Section 2 of
2 the federal Securities Act of 1933, as amended, and rules
3 adopted pursuant to that act; and

4 (2) "New Mexico fine musical instrument
5 private equity fund" means any limited partnership, limited
6 liability company or corporation organized and operating in New
7 Mexico that:

8 (a) has as its primary business activity
9 the use of funds to acquire fine musical instruments, which are
10 defined as musical instruments that: 1) are stringed,
11 unfretted instruments; 2) were made in the seventeenth,
12 eighteenth or nineteenth century in Italy, France, Germany or
13 England; 3) have a maker whose instruments have sold at
14 auction; 4) have demonstrated that they have a secondary
15 market; and 5) have a value not less than one hundred thousand
16 dollars (\$100,000) or more than eight million dollars
17 (\$8,000,000);

18 (b) will hold these acquisitions for
19 sale opportunistically, not later than ten years from the date
20 of acquisition, with the objective of capital appreciation; and

21 (c) accepts investments only from
22 accredited investors as that term is defined in Section 2 of
23 the federal Securities Act of 1933, as amended, and rules
24 adopted pursuant to that section. "

25 Section 2. Section 7-27-5 NMSA 1978 (being Laws 1983,

. 153664. 1

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1 Chapter 306, Section 7, as amended) is amended to read:

2 "7-27-5. INVESTMENT OF SEVERANCE TAX PERMANENT FUND. -- The
3 severance tax permanent fund shall be invested for two general
4 purposes, to provide income to the fund and to stimulate the
5 economy of New Mexico, preferably on a continuing basis. The
6 investments [~~in~~] pursuant to Sections 7-27-5.1 and 7-27-5.6
7 NMSA 1978 shall be those intended to provide maximum income to
8 the fund and shall be referred to as the market rate
9 investments. The investments [~~permitted in~~] pursuant to
10 Sections 7-27-5.3 through 7-27-5.5, 7-27-5.13 through
11 7-27-5.17, 7-27-5.22 and 7-27-5.24 through 7-27-5.26 NMSA 1978
12 and the investments permitted for fine art and fine musical
13 instruments provided in this 2005 act shall be those intended
14 to stimulate the economy of New Mexico and shall be referred to
15 as the differential rate investments. The prudent man rule
16 shall be applied to the market rate investments, and the state
17 investment officer shall keep separate records of the earnings
18 of the market rate investments. All transactions entered into
19 on or after July 1, 1991 shall be accounted for in accordance
20 with generally accepted accounting principles. "

21 Section 3. EMERGENCY. -- It is necessary for the public
22 peace, health and safety that this act take effect immediately.