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HOUSE BILL 173

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Brian F. Egolf

AN ACT

RELATING TO THE STATE FISC; CREATING A PREFERENCE FOR COMMUNITY BANKS AND CREDIT UNIONS FOR CERTAIN STATE FUNDS; REQUIRING THE DEVELOPMENT OF A PROGRAM FOR INCREASING INVESTMENT IN COMMUNITY BANKS OR CREDIT UNIONS; REQUIRING A FEASIBILITY STUDY.

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

SECTION 1. A new section of Chapter 6, Article 10 NMSA 1978 is enacted to read:

"[NEW MATERIAL] COMMUNITY BANK INVESTMENTS.--

A. The state treasurer, with the state investment council, the department and the state board of finance, shall develop, pursuant to the State Rules Act, a program to increase state investment in certificates of deposit at institutions pursuant to Article 8, Section 4 of the constitution of New Mexico to promote community investment by community banks.

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1 B. The state treasurer and the state investment
2 council shall promulgate rules to determine that portion of the
3 general fund operating cash depository account, bond proceeds
4 investment pools and the severance tax permanent fund that is
5 not needed to meet short-term liquidity needs pursuant to
6 Section 6-10-26 NMSA 1978 and, subsequently, create an
7 investment program for the remainder aimed at increasing
8 community bank lending to New Mexico businesses and residents.
9 The investment program rules shall include accountability and
10 reporting provisions requiring a participating community bank
11 to provide information to enable the state treasurer and state
12 investment council to evaluate the effectiveness of the
13 program, including how state funds are being used and the
14 impact of state funds on the ability of the community bank to
15 make loans to New Mexico businesses and residents.

16 C. The rules promulgated pursuant to Subsection B
17 of this section shall balance the investment priorities, such
18 as the preservation of the principal balance, the maintenance
19 of liquidity and maximum return with the need for a program
20 where the state invests in certificates of deposit with
21 maturity terms of at least one year, thereby providing
22 community banks with additional reserves to lend to New Mexico
23 businesses.

24 D. As used in this section, "community bank" means
25 a federally insured depository institution organized under the

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1 laws of New Mexico or of the United States, that is
2 headquartered in New Mexico and that has been granted a state
3 of New Mexico or federal bank charter, or a credit union that
4 is insured by the national credit union administration, that is
5 organized under the laws of New Mexico or the United States and
6 that is headquartered in New Mexico."

7 SECTION 2. Section 6-10-35 NMSA 1978 (being Laws 1934
8 (S.S.), Chapter 24, Section 3, as amended) is amended to read:

9 "6-10-35. FISCAL AGENT OF NEW MEXICO--STATE CHECKING
10 DEPOSITORIES--STATE DEPOSITORIES--DESIGNATION BY STATE BOARD OF
11 FINANCE.--

12 A. Except as otherwise provided by law, the state
13 board of finance may designate a bank or savings and loan
14 association doing business in this state and having an
15 unimpaired capital and surplus of at least one hundred fifty
16 thousand dollars (\$150,000) as the "fiscal agent of New
17 Mexico". The designation is subject to change, from time to
18 time, by the state board of finance; however, the board shall
19 formulate and adopt designation procedures, filed in accordance
20 with the State Rules Act, that shall be adhered to on each
21 occasion of designation. The board, after it has designated
22 the fiscal agent, shall apprise the legislature of its action
23 and, in addition to the name of the designated fiscal agent,
24 the communication shall include a brief description of the
25 designee's particular qualifications.

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1 B. The bank or savings and loan association
2 designated as the fiscal agent of New Mexico shall enter into
3 an agreement with the state, acting through the state board of
4 finance, for:

5 (1) the collection for the state of all checks
6 and other items received by the state on any account;

7 (2) the handling of the checking account of
8 the state treasurer;

9 (3) the handling of all transfers of money in
10 connection with the sale or retirement of bonds or obligations
11 of the state or the purchase by the state of bonds or other
12 securities;

13 (4) the investment of permanent or other funds
14 of the state;

15 (5) the safekeeping of bonds or other
16 securities belonging to or held by the state or any official of
17 the state;

18 (6) the rate of interest to be paid upon
19 average daily balances of state funds; and

20 (7) acting as the agent of the state in fiscal
21 matters generally, subject always to the supervision and
22 approval of the state board of finance.

23 C. The agreement shall contain the terms and
24 conditions that are necessary, in the judgment of the state
25 board of finance, for the proper conduct of the fiscal affairs

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1 of the state and the safekeeping of the money of the state.

2 D. The state board of finance shall require the
3 fiscal agent of New Mexico to furnish surety company bond or
4 securities of the kinds specified by law for the security of
5 deposits of public money in an amount not less than two million
6 five hundred thousand dollars (\$2,500,000) as security for the
7 safekeeping of the money of the state and the faithful
8 performance of its duties as the fiscal agent. The state board
9 of finance may adjust the amount of bond or security from time
10 to time, but in no event shall the bond or security be in an
11 amount less than two million five hundred thousand dollars
12 (\$2,500,000). No other bond or security is required of the
13 fiscal agent for the securing of funds deposited by the state
14 treasurer in the fiscal agency account, and the state treasurer
15 is not liable upon the state treasurer's official bond on
16 account of funds deposited in the fiscal agency account when
17 the account is so secured. Nothing in this section shall
18 prevent the bank or savings and loan association designated as
19 fiscal agent from also qualifying as a state depository
20 pursuant to Chapter 6, Article 10 NMSA 1978.

21 E. Payment to the fiscal agent of New Mexico for
22 services performed may be made by the state board of finance
23 upon warrants drawn by the secretary upon the state treasury as
24 provided by law for expenditure of state funds or by
25 compensating balances or a combination thereof. The

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1 legislature shall appropriate funds to the state board of
2 finance for this purpose annually.

3 F. The state board of finance may also designate,
4 according to its adopted designation procedures, not more than
5 two other banks or savings and loan associations doing business
6 in this state as "state checking depositories" in which money
7 necessary to meet the current obligations of the state may be
8 deposited in temporary checking accounts. No bank or savings
9 and loan association shall be so designated unless it has an
10 unimpaired capital and surplus of at least one hundred fifty
11 thousand dollars (\$150,000). Not more than twenty percent of
12 all the state's money on hand shall be on deposit in all such
13 checking accounts, including the checking account with the
14 fiscal agent of New Mexico, for any period of time longer than
15 is required to distribute the amount above twenty percent to
16 applying, qualified depository banks or savings and loan
17 associations. The state board of finance shall require a
18 designated state checking depository to furnish surety company
19 bond or securities of the kinds specified by law for the
20 security of deposits of public money in an amount established
21 by the board. Nothing in this section shall prevent a bank or
22 savings and loan association designated as a state checking
23 depository from also qualifying as a state depository pursuant
24 to Chapter 6, Article 10 NMSA 1978, and nothing in this section
25 shall prohibit the state treasurer from transferring to out-of-

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1 state banks and keeping on deposit with them funds necessary to
2 pay interest upon and principal of those outstanding bonds,
3 debentures and certificates of indebtedness that, with the
4 interest coupons, were made payable at an out-of-state bank.

5 G. An authorized bank, savings and loan association
6 or credit union desiring to receive public money deposits may
7 file with the board of finance having control of the money its
8 written proposal to receive the money on deposit, together with
9 its agreement to pay interest on daily balances of the deposits
10 at the rate of interest fixed by the state board of finance as
11 prescribed in Section 6-10-30 NMSA 1978. The proposal shall
12 specify whether the deposit is desired as a time deposit. The
13 board of finance shall, at its next meeting after receipt of
14 the proposal, consider the proposal, and, if it is in
15 accordance with Chapter 6, Article 10 NMSA 1978, the board
16 shall thereupon notify the bank or savings and loan association
17 that upon its furnishing security as provided, it will be
18 designated as a "state depository" of public money in an amount
19 to be fixed by the board, which amount shall not exceed
20 seventy-five percent of the capital and surplus of the
21 applicant bank or savings and loan association if the deposit
22 is secured by surety bond. If, after considering the proposal
23 of a credit union and finding it in accordance with Section
24 6-10-36 NMSA 1978, the board of finance may designate the
25 credit union a "state depository" of public money in an amount

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1 to be fixed by the board, which shall not exceed that amount
2 insured by an agency of the United States. Upon furnishing
3 proper bond or other security authorized by Chapter 6, Article
4 10 NMSA 1978, a certificate shall be issued to the bank or
5 savings and loan association by the board of finance qualifying
6 it as a depository of public money; and, if designated, a
7 certificate shall be issued to a credit union qualifying it as
8 a depository of public money; provided that a bank located
9 outside the state, acting solely in the capacity of a paying
10 bank for the purpose of paying interest upon and principal of
11 state obligations represented by bonds, debentures and
12 certificates of indebtedness and attached interest coupons, is
13 not required to furnish collateral security in excess of one
14 hundred thousand dollars (\$100,000) regardless of the amount of
15 state public money on deposit.

16 H. The state board of finance shall give a
17 preference to a community bank to act as the fiscal agent of
18 New Mexico. When proposals are received from a community bank
19 and a nonresident bank, the contract shall be awarded to the
20 community bank if:

21 (1) the community bank meets the minimum
22 requirements of the state board of finance;

23 (2) the proposal price of the community bank
24 when multiplied by a factor of .9 is lower than the proposal
25 price of a nonresident bank; and

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1 (3) the community bank proposal meets or
2 exceeds the other evaluation criteria set in the scope of
3 procurement by the state board of finance.

4 I. As used in this section:

5 (1) "community bank" means a federally insured
6 depository institution organized under the laws of New Mexico
7 or of the United States, that is headquartered in New Mexico
8 and that has been granted a state of New Mexico or federal bank
9 charter, or a credit union that is insured by the national
10 credit union administration, that is organized under the laws
11 of New Mexico or the United States and that is headquartered in
12 New Mexico; and

13 (2) "nonresident bank" means a federally
14 insured depository institution that is headquartered in a state
15 other than New Mexico."

16 SECTION 3. TEMPORARY PROVISION--STUDY.--The state
17 treasurer, the secretary of finance and administration, a
18 representative from the state investment council and a
19 representative from the state board of finance shall study the
20 feasibility of dividing the general fund operating cash
21 depository account between community banks and credit unions in
22 order to ensure that state money benefits New Mexico residents.
23 The state treasurer shall report the results of the study to
24 the legislative finance committee and the governor by December
25 1, 2011.

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