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SENATE BILL 1

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

INTRODUCED BY

Michael S. Sanchez

AN ACT

RELATING TO PUBLIC MONEY; ENACTING THE RECOVERY INVESTMENT  
BONDING ACT; AUTHORIZING THE ISSUANCE OF SHORT-TERM REVENUE  
BONDS, KNOWN AS "RECOVERY INVESTMENT NOTES", FOR THE PURPOSE OF  
SUPPLEMENTING REVENUE TO THE GENERAL FUND; PLEDGING GROSS  
RECEIPTS TAX REVENUE FOR THE RETIREMENT OF THE BONDS; MAKING AN  
APPROPRIATION; DECLARING AN EMERGENCY.

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

**SECTION 1.** [NEW MATERIAL] SHORT TITLE.--Sections 1  
through 9 of this act may be cited as the "Recovery Investment  
Bonding Act".

**SECTION 2.** [NEW MATERIAL] FINDINGS AND PURPOSE.--

A. The legislature finds that:

(1) the state, national and world economies  
have experienced a decline in economic activity that is of

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1 sufficient severity to place the state's finances in an  
2 untenable position;

3 (2) in the next fiscal year, even after the  
4 implementation of legislative and executive initiatives,  
5 appropriations are expected to substantially exceed revenues  
6 and it is unlikely that the state will be able to cut  
7 expenditures or increase revenues enough to fund essential  
8 state services at even a minimum level;

9 (3) for the longer term, sustained economic  
10 growth is expected, with a return to job creation and resulting  
11 income and revenue growth; and

12 (4) New Mexico's general fund needs a short-  
13 term influx of revenue, one which can be provided without any  
14 severe, negative long-term effects, so that a minimum level of  
15 essential state services can still be provided to citizens.

16 B. The purpose of the Recovery Investment Bonding  
17 Act is to provide a mechanism for the state to invest enough  
18 money from its permanent funds to avoid extreme economic  
19 hardship for its citizens, while providing a secure revenue  
20 source that will pay the debt and guarantee that the long-term  
21 health and stability of those funds are not threatened.

22 SECTION 3. [NEW MATERIAL] RECOVERY INVESTMENT NOTES  
23 AUTHORIZATION--DISTRIBUTION OF PROCEEDS.--

24 A. The state board of finance is authorized to  
25 issue and sell revenue bonds, known as "recovery investment

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1 notes", payable solely from the recovery investment bonding  
2 fund, in compliance with the Recovery Investment Bonding Act  
3 for the purpose of augmenting the balance of the general fund  
4 in order to meet general fund appropriations. The bonds may be  
5 issued when the secretary of finance and administration has  
6 certified the need for the issuance of the bonds; provided that  
7 the total amount of recovery investment notes issued pursuant  
8 to the Recovery Investment Bonding Act shall not exceed three  
9 hundred million dollars (\$300,000,000).

10 B. The net proceeds from the sale of recovery  
11 investment notes shall be deposited in the general fund and may  
12 be used to meet appropriations from that fund.

13 C. After June 30, 2012, no additional recovery  
14 investment notes shall be issued.

15 SECTION 4. [NEW MATERIAL] RECOVERY INVESTMENT BONDING  
16 FUND CREATED--MONEY IN THE FUND PLEDGED.--

17 A. The "recovery investment bonding fund" is  
18 created as a special fund within the state treasury. The fund  
19 shall consist of money appropriated and transferred to the fund  
20 and gross receipts tax revenues distributed to the fund by law.  
21 Earnings of the fund shall be credited to the fund. Balances  
22 in the fund at the end of any fiscal year shall remain in the  
23 fund, except as provided in this section.

24 B. Money in the recovery investment bonding fund is  
25 pledged for the payment of principal and interest on all

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1 recovery investment notes issued pursuant to the Recovery  
2 Investment Bonding Act and is appropriated to the state board  
3 of finance for the purpose of paying debt service, including  
4 redemption premiums, on the recovery investment notes and the  
5 expenses incurred in the issuance, payment and administration  
6 of the notes.

7 C. On the last day of January and July of each  
8 year, the state board of finance shall estimate the amount  
9 needed to make debt service and other payments during the next  
10 twelve months from the recovery investment bonding fund on the  
11 recovery investment notes issued pursuant to the Recovery  
12 Investment Bonding Act plus the amount that may be needed for  
13 any required reserves. The state board of finance shall  
14 transfer to the general fund any balance in the recovery  
15 investment bonding fund above the estimated amounts.

16 D. Any balance remaining in the recovery investment  
17 bonding fund shall be transferred to the general fund upon  
18 certification by the state board of finance to the secretary of  
19 finance and administration that the recovery investment notes  
20 issued pursuant to the Recovery Investment Bonding Act have  
21 been retired, that no additional obligations of the recovery  
22 investment bonding fund exist and that no additional  
23 expenditures from the fund are necessary.

24 E. The recovery investment notes issued pursuant to  
25 the Recovery Investment Bonding Act shall be payable solely

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1 from the recovery investment bonding fund or, with the approval  
2 of the bondholders, from such other special funds that may be  
3 provided by law. The recovery investment notes do not create  
4 an obligation or indebtedness of the state within the meaning  
5 of any constitutional provision. No breach of any contractual  
6 obligation incurred pursuant to that act shall impose a  
7 pecuniary liability or a charge upon the general credit or  
8 taxing power of the state, and the bonds are not general  
9 obligations for which the state's full faith and credit is  
10 pledged.

11 F. The state does hereby pledge that the recovery  
12 investment bonding fund shall be used only for the purposes  
13 specified in this section and shall be pledged first to pay the  
14 debt service on the recovery investment notes issued pursuant  
15 to the Recovery Investment Bonding Act. The state further  
16 pledges that any law authorizing the distribution of taxes or  
17 other revenues to the recovery investment bonding fund or  
18 authorizing expenditures from the fund shall not be amended or  
19 repealed or otherwise modified so as to impair the bonds to  
20 which the recovery investment bonding fund is dedicated as  
21 provided in this section.

22 SECTION 5. [NEW MATERIAL] AUTHORITY TO REFUND BONDS.--The  
23 state board of finance may issue and sell recovery investment  
24 notes to refund outstanding recovery investment notes by  
25 exchange, immediate or prospective redemption, cancellation or

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1 escrow, including the escrow of debt service funds accumulated  
2 for payment of outstanding bonds, or any combination thereof,  
3 when, in its opinion, such action will be beneficial to the  
4 state.

5 SECTION 6. [NEW MATERIAL] RECOVERY INVESTMENT NOTES--  
6 FORM--EXECUTION.--

7 A. The state board of finance, except as otherwise  
8 specifically provided in the Recovery Investment Bonding Act,  
9 shall determine at its discretion the terms, covenants and  
10 conditions of recovery investment notes, including, but not  
11 limited to, date of issue, denominations, maturities, rate or  
12 rates of interest, call features, call premiums, registration,  
13 refundability and other covenants covering the general and  
14 technical aspects of the issuance of the bonds; provided that:

15 (1) the rate of interest payable on recovery  
16 investment notes shall not exceed the equivalent yield  
17 available on United States treasury issues of a comparable  
18 maturity plus two hundred basis points; and

19 (2) the term of recovery investment notes  
20 shall not exceed five years.

21 B. The recovery investment notes shall be in such  
22 form as the state board of finance may determine, and  
23 successive issues shall be identified by alphabetical,  
24 numerical or other proper series designation.

25 C. Recovery investment notes shall be signed and

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1 attested to by the state treasurer and shall be executed with  
2 the facsimile signature of the governor and the facsimile seal  
3 of the state, except for notes issued in book entry or similar  
4 form without the delivery of physical securities. Any interest  
5 coupons attached to the notes shall bear the facsimile  
6 signature of the state treasurer, which officer, by the  
7 execution of the notes, shall adopt as the treasurer's own  
8 signature the facsimile thereof appearing on the coupons.  
9 Except for notes issued in book entry or similar form without  
10 the delivery of physical securities, the Uniform Facsimile  
11 Signature of Public Officials Act shall apply, and the state  
12 board of finance shall determine, the manual signature to be  
13 affixed to the bonds.

14 SECTION 7. [NEW MATERIAL] PROCEDURE FOR SALE OF RECOVERY  
15 INVESTMENT NOTES.--

16 A. Recovery investment notes shall be sold by the  
17 state board of finance at such times and in such manner as the  
18 board may elect, consistent with the need as certified by the  
19 secretary of finance and administration.

20 B. Recovery investment notes shall be sold only at  
21 private sale for a negotiated price and only to the state  
22 investment officer as an investment of the land grant permanent  
23 funds or the severance tax permanent fund.

24 SECTION 8. [NEW MATERIAL] RECOVERY INVESTMENT BONDING ACT  
25 IS FULL AUTHORITY FOR ISSUANCE OF NOTES--LEGAL INVESTMENTS.--

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1           A. The Recovery Investment Bonding Act shall,  
2 without reference to any other act of the legislature, be full  
3 authority for the issuance and sale of recovery investment  
4 notes, which notes shall have all the qualities of investment  
5 securities under the Uniform Commercial Code and shall not be  
6 invalid for any irregularity or defect or be contestable in the  
7 hands of bona fide purchasers or holders thereof for value.

8           B. Recovery investment notes are legal investments  
9 for the land grant permanent funds and the severance tax  
10 permanent fund.

11           SECTION 9. [NEW MATERIAL] SUIT MAY BE BROUGHT TO COMPEL  
12 PERFORMANCE.--Any holder of recovery investment notes or any  
13 person or officer being a party in interest may sue to enforce  
14 and compel the performance of the provisions of the Recovery  
15 Investment Bonding Act.

16           SECTION 10. A new section of the Tax Administration Act  
17 is enacted to read:

18           "NEW MATERIAL] DISTRIBUTION--RECOVERY INVESTMENT BONDING  
19 FUND--GROSS RECEIPTS TAX.--Commencing on the last day of the  
20 month in which the state board of finance certifies to the  
21 secretary that recovery investment notes have been issued  
22 pursuant to the Recovery Investment Bonding Act, a distribution  
23 pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the  
24 recovery investment bonding fund from the net receipts  
25 attributable to the gross receipts tax imposed by the Gross

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1 Receipts and Compensating Tax Act for the purpose of making  
2 debt service payments on outstanding recovery investment notes.  
3 The amount of the distribution shall be the amount certified by  
4 the state board of finance as needed to make the debt service  
5 payments plus the amount needed for any necessary reserves;  
6 provided that the distribution shall not exceed five million  
7 seven hundred thousand dollars (\$5,700,000). The distribution  
8 shall be made:

9 A. after the required distribution pursuant to  
10 Section 7-1-6.4 NMSA 1978;

11 B. contemporaneously with other distributions of  
12 net receipts attributable to the gross receipts tax for payment  
13 of debt service on outstanding bonds or to a fund dedicated for  
14 that purpose; and

15 C. prior to any other distribution of net receipts  
16 attributable to the gross receipts tax."

17 **SECTION 11. DELAYED REPEAL.--**The Recovery Investment  
18 Bonding Act and Section 10 of this 2011 act are repealed on the  
19 earliest of the following dates:

20 A. the first day of the first month following the  
21 month in which the state board of finance certifies to the  
22 secretary of finance and administration, the secretary of  
23 taxation and revenue, the legislative council service and the  
24 New Mexico compilation commission that the recovery investment  
25 notes issued pursuant to the Recovery Investment Bonding Act

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1 have been retired, that no additional obligations of the  
2 recovery investment bonding fund exist and that no additional  
3 expenditures from that fund are necessary; or

4 B. July 1, 2017.

5 SECTION 12. EMERGENCY.--It is necessary for the public  
6 peace, health and safety that this act take effect immediately.

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