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AN ACT

RELATING TO PUBLIC MONEY; ALLOWING SCHOOL DISTRICTS AND CERTAIN CHARTER SCHOOLS TO MAKE INVESTMENTS OF PUBLIC MONEY; ALLOWING SCHOOL DISTRICTS AND CERTAIN CHARTER SCHOOLS TO DETERMINE DEPOSITS WITH LOCAL QUALIFIED DEPOSITORIES.

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

SECTION 1. Section 6-10-1.1 NMSA 1978 (being Laws 1987, Chapter 79, Section 3, as amended) is amended to read:

"6-10-1.1. DEFINITIONS.--As used in Chapter 6, Article 10 NMSA 1978:

A. "department" means the department of finance and administration;

B. "deposit" includes share, share certificate and share draft;

C. "eligible governing body" means a local governing body, the governing authority of a tribe or any other governmental or quasi-governmental body created or authorized to be created pursuant to New Mexico statutes;

D. "finance officer" means the chief financial officer of an eligible governing body or a participating government;

E. "local governing body" means a political subdivision of the state, including a school district, a charter school whose governing body has been designated as a

1 board of finance or a post-secondary educational institution;

2 F. "participating government" means an eligible  
3 governing body or the state treasurer on behalf of the  
4 general fund that has invested money in the participating  
5 government investment fund;

6 G. "secretary" means the secretary of finance and  
7 administration;

8 H. "treasury" means the master depository or cash  
9 concentration account held at the state's fiscal agent bank  
10 and administered by the office of the state treasurer, unless  
11 the context otherwise clearly indicates; and

12 I. "tribe" means a federally recognized Indian  
13 nation, tribe or pueblo or a subdivision or agency of a  
14 federally recognized Indian nation, tribe or pueblo, located  
15 wholly or partially in New Mexico."

16 SECTION 2. Section 6-10-10 NMSA 1978 (being Laws 1933,  
17 Chapter 175, Section 4, as amended) is amended to read:

18 "6-10-10. DEPOSIT AND INVESTMENT OF FUNDS.--

19 A. Upon the certification or designation of a  
20 bank, savings and loan association or credit union whose  
21 deposits are insured by an agency of the United States to  
22 receive public money on deposit, the state treasurer, county  
23 or municipal treasurers and school district designees who  
24 have on hand any public money by virtue of their offices  
25 shall make deposit of that money in banks and savings and

1 loan associations and may make deposit of that money in  
2 credit unions whose deposits are insured by an agency of the  
3 United States, designated by the authority authorized by law  
4 to so designate to receive the deposits of all money  
5 thereafter received or collected by the treasurers or school  
6 district designees.

7 B. County or municipal treasurers or school  
8 district designees may deposit money in one or more accounts  
9 with any such bank, savings and loan association or credit  
10 union located in their respective counties, subject to  
11 limitation on credit union accounts.

12 C. The state treasurer may deposit money in one or  
13 more accounts with any such bank, savings and loan  
14 association or credit union, subject to the limitation on  
15 credit union accounts.

16 D. Duplicate receipts or deposit slips shall be  
17 taken for each deposit made pursuant to Subsection A, B or C  
18 of this section. When deposits are made by the state  
19 treasurer, one copy of the receipt or deposit slip shall be  
20 retained by the state treasurer and the other copy shall be  
21 filed monthly on the first day of each month with the  
22 financial control division of the department of finance and  
23 administration. When deposits are made by the treasurer or  
24 any other authorized person making the deposits for a board  
25 of finance of a public or educational institution, one copy

1 of the receipt or deposit slip shall be retained by the  
2 treasurer or authorized person making the deposit and the  
3 other copy shall be filed monthly on the first day of each  
4 month with that board of finance. When deposits are made by  
5 a county or municipal treasurer, one of the duplicate  
6 receipts or deposit slips shall be retained by the treasurer  
7 making the deposit and the other copy shall be filed monthly  
8 on the first day of each month with the secretary of the  
9 board of finance of the county, municipality or school  
10 district for which that treasurer is acting.

11 E. "Deposit", as used in this section, means  
12 either investment or deposit and includes share, share  
13 certificate and share draft.

14 F. County or municipal treasurers or school  
15 district designees, with the advice and consent of their  
16 respective boards of finance charged with the supervision and  
17 control of the respective funds, may invest all sinking funds  
18 or money remaining unexpended from the proceeds of any issue  
19 of bonds or other negotiable securities of any county,  
20 municipality or school district that is entrusted to their  
21 care and custody and all money not immediately necessary for  
22 the public uses of the counties, municipalities or school  
23 districts not invested or deposited in banks, savings and  
24 loan associations or credit unions in:

25 (1) bonds or negotiable securities of the

1 United States, the state or a county, municipality or school  
2 district that has a taxable valuation of real property for  
3 the last preceding year of at least one million dollars  
4 (\$1,000,000) and that has not defaulted in the payment of any  
5 interest or sinking fund obligation or failed to meet any  
6 bonds at maturity at any time within five years last  
7 preceding; or

8 (2) securities that are issued by the United  
9 States government or by its agencies or instrumentalities and  
10 that are either direct obligations of the United States, the  
11 federal home loan mortgage corporation, the federal national  
12 mortgage association, the federal farm credit bank or federal  
13 home loan banks or that are backed by the full faith and  
14 credit of the United States government.

15 G. The treasurer of a class A county or the  
16 treasurer of a municipality having a population of more than  
17 sixty-five thousand according to the most recent federal  
18 decennial census and located within a class A county, or the  
19 designee of a school district, with the advice and consent of  
20 the boards of finance charged with the supervision and  
21 control of the funds, may invest all sinking funds or money  
22 remaining unexpended from the proceeds of any issue of bonds  
23 or other negotiable securities of the county, municipality or  
24 school district that is entrusted to the treasurer's care and  
25 custody and all money not immediately necessary for the

1 public uses of the county, municipality or school district  
2 not invested or deposited in banks, savings and loan  
3 associations or credit unions in:

4 (1) shares of a diversified investment  
5 company registered pursuant to the federal Investment Company  
6 Act of 1940 that invests in fixed-income securities or debt  
7 instruments that are listed in a nationally recognized,  
8 broad-market, fixed-income-securities market index; provided  
9 that the investment company or manager has total assets under  
10 management of at least one hundred million dollars  
11 (\$100,000,000) and provided that the board of finance of the  
12 county, municipality or school district may allow reasonable  
13 administrative and investment expenses to be paid directly  
14 from the income or assets of these investments;

15 (2) individual, common or collective trust  
16 funds of banks or trust companies that invest in fixed-income  
17 securities or debt instruments that are listed in a  
18 nationally recognized, broad-market, fixed-income-securities  
19 market index; provided that the investment company or manager  
20 has total assets under management of at least one hundred  
21 million dollars (\$100,000,000) and provided that the board of  
22 finance of the county, municipality or school district may  
23 allow reasonable administrative and investment expenses to be  
24 paid directly from the income or assets of these investments;

25 or

1                   (3) shares of pooled investment funds  
2 managed by the state investment officer, as provided in  
3 Subsection E of Section 6-8-7 NMSA 1978; provided that the  
4 board of finance of the county, municipality or school  
5 district may allow reasonable administrative and investment  
6 expenses to be paid directly from the income or assets of  
7 these investments.

8                   H. A local public body, with the advice and  
9 consent of the body charged with the supervision and control  
10 of the local public body's respective funds, may invest all  
11 sinking funds or money remaining unexpended from the proceeds  
12 of any issue of bonds or other negotiable securities of the  
13 investor that is entrusted to the local public body's care  
14 and custody and all money not immediately necessary for the  
15 public uses of the investor and not otherwise invested or  
16 deposited in banks, savings and loan associations or credit  
17 unions in contracts with banks, savings and loan associations  
18 or credit unions for the present purchase and resale at a  
19 specified time in the future of specific securities at  
20 specified prices at a price differential representing the  
21 interest income to be earned by the investor. The contract  
22 shall be fully secured by obligations of the United States or  
23 other securities backed by the United States having a market  
24 value of at least one hundred two percent of the contract.

25 The collateral required for investment in the contracts

1 provided for in this subsection shall be shown on the books  
2 of the financial institution as being the property of the  
3 investor and the designation shall be contemporaneous with  
4 the investment. As used in this subsection, "local public  
5 body" includes all political subdivisions of the state and  
6 agencies, instrumentalities and institutions thereof;  
7 provided that home rule municipalities that prior to  
8 July 1, 1994 had enacted ordinances authorizing the  
9 investment of repurchase agreements may continue investment  
10 in repurchase agreements pursuant to those ordinances.

11 I. The state treasurer, with the advice and  
12 consent of the state board of finance, may invest money held  
13 in demand deposits and not immediately needed for the  
14 operation of state government and money held in the  
15 participating government investment fund, except as provided  
16 in Section 6-10-10.1 NMSA 1978. The investments may be made  
17 in securities that are issued by the United States government  
18 or by its departments or agencies and are either direct  
19 obligations of the United States or are backed by the full  
20 faith and credit of the United States government or agencies  
21 sponsored by the United States government.

22 J. The state treasurer, with the advice and  
23 consent of the state board of finance, may also invest in  
24 contracts for the present purchase and resale at a specified  
25 time in the future, not to exceed one year or, in the case of



1 bond proceeds, not to exceed three years, of specific  
2 securities at specified prices at a price differential  
3 representing the interest income to be earned by the state.  
4 Such contract shall not be invested in unless the contract is  
5 fully secured by obligations of the United States or its  
6 agencies or instrumentalities or by other securities backed  
7 by the United States or its agencies or instrumentalities  
8 having a market value of at least one hundred two percent of  
9 the amount of the contract. The securities required as  
10 collateral under this subsection shall be delivered to a  
11 third-party custodian bank pursuant to a contract with the  
12 state and the counterparty or to the fiscal agent of New  
13 Mexico or its designee. Delivery shall be made  
14 simultaneously with the transfer of funds or as soon as  
15 practicable, but no later than the same day that the funds  
16 are transferred.

17 K. The state treasurer, with the advice and  
18 consent of the state board of finance, may also invest in  
19 contracts for the temporary exchange of state-owned  
20 securities for the use of broker-dealers, banks or other  
21 recognized institutional investors in securities, for periods  
22 not to exceed one year for a specified fee rate. Such  
23 contract shall not be invested in unless the contract is  
24 fully secured by exchange of an irrevocable letter of credit  
25 running to the state, cash or equivalent collateral of at

1 least one hundred two percent of the market value of the  
2 securities plus accrued interest temporarily exchanged. The  
3 collateral required by this subsection shall be delivered to  
4 the fiscal agent of New Mexico or its designee simultaneously  
5 with the transfer of funds or as soon as practicable, but no  
6 later than the same day that the state-owned securities are  
7 transferred.

8 L. Neither of the contracts in Subsection J or K  
9 of this section shall be invested in unless the contracting  
10 bank, brokerage firm or recognized institutional investor has  
11 a net worth in excess of five hundred million dollars  
12 (\$500,000,000).

13 M. The state treasurer, with the advice and  
14 consent of the state board of finance, may also invest in any  
15 of the following investments in an amount not to exceed forty  
16 percent of any fund that the state treasurer invests:

17 (1) commercial paper rated "prime" quality  
18 by a national rating service, issued by corporations  
19 organized and operating within the United States;

20 (2) medium-term notes and corporate notes  
21 with a maturity not exceeding five years that are rated A or  
22 its equivalent or better by a nationally recognized rating  
23 service and that are issued by a corporation organized and  
24 operating in the United States; or

25 (3) an asset-backed obligation with a

1 maturity not exceeding five years that is rated AAA or its  
2 equivalent by a nationally recognized rating service.

3 N. The state treasurer, with the advice and  
4 consent of the state board of finance, may also invest in:

5 (1) shares of an open-ended diversified  
6 investment company that:

7 (a) is registered with the United  
8 States securities and exchange commission;

9 (b) complies with the diversification,  
10 quality and maturity requirements of Rule 2a-7, or any  
11 successor rule, of the United States securities and exchange  
12 commission applicable to money market mutual funds; and

13 (c) assesses no fees pursuant to Rule  
14 12b-1, or any successor rule, of the United States securities  
15 and exchange commission, no sales load on the purchase of  
16 shares and no contingent deferred sales charge or other  
17 similar charges, however designated, provided that the state  
18 shall not, at any time, own more than five percent of a money  
19 market mutual fund's assets;

20 (2) individual, common or collective trust  
21 funds of banks or trust companies that invest in United  
22 States fixed-income securities or debt instruments authorized  
23 pursuant to Subsections I, J and M of this section, provided  
24 that the investment manager has assets under management of at  
25 least one billion dollars (\$1,000,000,000) and the

1 investments made by the state treasurer pursuant to this  
2 paragraph are less than five percent of the assets of the  
3 individual, common or collective trust fund; or

4 (3) the participating government investment  
5 fund managed by the office of the state treasurer.

6 Investments made pursuant to this paragraph shall be less  
7 than five percent of the total assets of the participating  
8 government investment fund.

9 O. Public funds to be invested in negotiable  
10 securities or loans to financial institutions fully secured  
11 by negotiable securities at current market value shall not be  
12 paid out unless there is a contemporaneous transfer of the  
13 securities at the earliest time industry practice permits,  
14 but in all cases, settlement shall be on a same-day basis  
15 either by physical delivery or, in the case of uncertificated  
16 securities, by appropriate book entry on the books of the  
17 issuer, to the purchaser or to a reputable safekeeping  
18 financial institution acting as agent or trustee for the  
19 purchaser, which agent or trustee shall furnish timely  
20 confirmation to the purchaser.

21 P. As used in this section "school district  
22 designee" means the school district or charter school  
23 employee who has been designated by the superintendent of a  
24 school district or head administrator of a charter school to  
25 manage public funds."

1 SECTION 3. Section 6-10-36 NMSA 1978 (being Laws 1977,  
2 Chapter 136, Section 1, as amended) is amended to read:

3 "6-10-36. PUBLIC MONEY DEPOSITS OF CERTAIN GOVERNMENTAL  
4 UNITS--DISTRIBUTION--INTEREST.--

5 A. All public money, except that in the custody of  
6 the state treasurer, institutions of higher education,  
7 technical and vocational institutes, incorporated  
8 municipalities and counties that have adopted home rule  
9 charters as authorized by the constitution of New Mexico,  
10 shall be deposited in qualified depositories in accordance  
11 with the terms of this section or invested as otherwise  
12 provided by law.

13 B. Deposits of funds of a governmental unit may be  
14 made in noninterest-bearing checking accounts in one or more  
15 banks or savings and loan associations designated as checking  
16 depositories located within the geographical boundaries of  
17 the governmental unit. In addition, deposits of funds may be  
18 in noninterest-bearing checking accounts in one or more  
19 credit unions designated as checking depositories located  
20 within the geographical boundaries of the governmental unit  
21 to the extent the deposits are insured by an agency of the  
22 United States. If there is no checking depository within the  
23 geographical boundaries of the governmental unit, one or more  
24 banks, savings and loan associations or credit unions within  
25 the county in which the principal office of the governmental

1 unit is located may be so designated, but credit union  
2 deposits shall be insured by an agency of the United States.

3 C. Public money placed in interest-bearing  
4 deposits in banks, savings and loan associations or credit  
5 unions shall be proportionately distributed among all banks,  
6 savings and loan associations and credit unions pursuant to  
7 the formula established by the director of the financial  
8 institutions division of the regulation and licensing  
9 department:

10 (1) having their main or staffed branch  
11 offices within the geographical boundaries of the  
12 governmental unit;

13 (2) that have qualified as public  
14 depositories by reason of insurance of the account by an  
15 agency of the United States or by depositing collateral  
16 security or by giving bond as provided by law; and

17 (3) that request a deposit of public money  
18 pursuant to this section.

19 D. The deposits shall be in the proportion that  
20 the deposits in offices located within the geographical  
21 boundaries of the governmental unit of each bank, savings and  
22 loan association or credit union that requests to receive  
23 deposits bears to the total deposits in offices located  
24 within the geographical boundaries of the governmental unit  
25 of all banks, savings and loan associations and credit unions

1 that have their main office or staffed branch office within  
2 the geographical boundaries of the governmental unit and that  
3 have a main or staffed branch within the geographical  
4 boundaries of the governmental unit and that have their main  
5 office or staffed branch office within the geographical  
6 boundaries of the governmental unit and that request a  
7 deposit of public money pursuant to this section. The  
8 director of the financial institutions division of the  
9 regulation and licensing department shall promulgate a  
10 formula for determining the deposits of banks', savings and  
11 loan associations' and credit unions' main offices and  
12 branches for the purposes of distribution of public money as  
13 provided for by this section.

14 E. The rate of interest for all public money  
15 deposited in interest-bearing accounts in banks, savings and  
16 loan associations and credit unions shall be set by the state  
17 board of finance, but in no case shall the rate of interest  
18 be less than would be earned by investing the funds in United  
19 States treasury bills of the same maturity on the day of  
20 deposit. Any bank or savings and loan association that fails  
21 to pay the minimum rate of interest at the time of deposit  
22 provided for in this subsection for any respective deposit  
23 forfeits its right to an equitable share of that deposit  
24 under this section. If the deposit is part or all of the  
25 proceeds of a bond issue and the interest rate prescribed in

1 this subsection materially exceeds the rate of interest of  
2 the bonds, the interest rate prescribed by this subsection  
3 shall be reduced on that deposit to an amount not materially  
4 exceeding the interest rate of the bonds if the bond issue  
5 would lose its tax-exempt status pursuant to the provisions  
6 of the Internal Revenue Code of 1986, as amended.

7 F. Public money in excess of that for which banks,  
8 savings and loan associations and credit unions within the  
9 geographical boundaries of the governmental unit have  
10 qualified may be deposited in qualified depositories in other  
11 areas within the state under the same requirements for  
12 payment of interest as if the money were deposited within the  
13 geographical boundaries of the governmental unit or may be  
14 invested as provided by law.

15 G. The department of finance and administration  
16 may monitor the deposits of public money by governmental units  
17 to assure full compliance with the provisions of this  
18 section."

19 SECTION 4. Section 22-8-40 NMSA 1978 (being Laws 1977,  
20 Chapter 136, Section 2, as amended) is amended to read:

21 "22-8-40. DEPOSIT OF PUBLIC SCHOOL FUNDS--  
22 DISTRIBUTION--INTEREST.--

23 A. Public money in the custody of school districts  
24 or state-chartered charter schools that have been designated  
25 as boards of finance shall be deposited in qualified



1 depositories in accordance with the provisions of  
2 Section 6-10-36 NMSA 1978; provided that, if the deposit is  
3 part or all of the proceeds of a bond issue and the interest  
4 rate materially exceeds the rate of interest of the bonds, the  
5 interest rate shall be reduced on the deposit to an amount not  
6 materially exceeding the interest rate of the bonds if the  
7 bond issue would lose its tax-exempt status under Section 103  
8 of the United States Internal Revenue Code, as amended.

9 B. Public money in excess of that for which banks,  
10 savings and loan associations and credit unions within the  
11 geographical boundaries of the school district have qualified  
12 may be deposited in qualified depositories, including credit  
13 unions, in other areas within the state under the same  
14 requirements for payment of interest as if the money were  
15 deposited within the geographical boundaries of the school  
16 district.

17 C. The board of finance of the school district or  
18 state-chartered charter school may temporarily invest money  
19 held in demand deposits and not immediately needed for the  
20 operation of the school district or state-chartered charter  
21 school in investments permitted by Section 6-10-10 NMSA 1978.

22 D. The department of finance and administration  
23 may monitor the deposits of public money by school districts  
24 or state-chartered charter schools to assure full compliance  
25 with the provisions of this section."