

1 HOUSE BILL 552

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Jimmie C. Hall

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10 AN ACT

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

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

19 "6-10-1.1. DEFINITIONS.--As used in Chapter 6, Article 10  
20 NMSA 1978:

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

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

25 C. "eligible governing body" means a local

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1 governing body, the governing authority of a tribe or any other  
2 governmental or quasi-governmental body created or authorized  
3 to be created pursuant to New Mexico statutes;

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

7 E. "local governing body" means a political  
8 subdivision of the state, including a school district, a  
9 charter school that is a board of finance or a post-secondary  
10 educational institution;

11 F. "participating government" means an eligible  
12 governing body or the state treasurer on behalf of the general  
13 fund that has invested money in the local government investment  
14 pool;

15 G. "secretary" means the secretary of finance and  
16 administration;

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

21 I. "tribe" means a federally recognized Indian  
22 nation, tribe or pueblo or a subdivision or agency of a  
23 federally recognized Indian nation, tribe or pueblo, located  
24 wholly or partially in New Mexico."

25 SECTION 2. Section 6-10-10 NMSA 1978 (being Laws 1933,

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1 Chapter 175, Section 4, as amended) is amended to read:

2 "6-10-10. DEPOSIT AND INVESTMENT OF FUNDS.--

3 A. Upon the certification or designation of a bank,  
4 savings and loan association or credit union whose deposits are  
5 insured by an agency of the United States to receive public  
6 money on deposit, the state treasurer and county or municipal  
7 treasurers and school board designees who have on hand any  
8 public money by virtue of their offices shall make deposit of  
9 that money in banks and savings and loan associations and may  
10 make deposit of that money in credit unions whose deposits are  
11 insured by an agency of the United States, designated by the  
12 authority authorized by law to so designate to receive the  
13 deposits of all money thereafter received or collected by the  
14 treasurers or school board designees.

15 B. County or municipal treasurers or school board  
16 designees may deposit money in one or more accounts with any  
17 such bank, savings and loan association or credit union located  
18 in their respective counties, subject to limitation on credit  
19 union accounts.

20 C. The state treasurer may deposit money in one or  
21 more accounts with any such bank, savings and loan association  
22 or credit union, subject to the limitation on credit union  
23 accounts.

24 D. Duplicate receipts or deposit slips shall be  
25 taken for each deposit made pursuant to Subsection A, B or C of

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1 this section. When deposits are made by the state treasurer,  
2 one copy of the receipt or deposit slip shall be retained by  
3 the state treasurer and the other copy shall be filed monthly  
4 on the first day of each month with the financial control  
5 division of the department. When deposits are made by the  
6 treasurer or any other authorized person making the deposits  
7 for a board of finance of a public or educational institution,  
8 one copy of the receipt or deposit slip shall be retained by  
9 the treasurer or authorized person making the deposit and the  
10 other copy shall be filed monthly on the first day of each  
11 month with that board of finance. When deposits are made by a  
12 county or municipal treasurer, one of the duplicate receipts or  
13 deposit slips shall be retained by the treasurer making the  
14 deposit and the other copy shall be filed monthly on the first  
15 day of each month with the secretary of the board of finance of  
16 the county or municipality for which that treasurer is acting.

17 E. "Deposit", as used in this section, means either  
18 investment or deposit and includes share, share certificate and  
19 share draft.

20 F. County or municipal treasurers or school board  
21 designees, with the advice and consent of their respective  
22 boards of finance charged with the supervision and control of  
23 the respective funds, may invest all sinking funds or money  
24 remaining unexpended from the proceeds of any issue of bonds or  
25 other negotiable securities of any county, municipality or

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1 school district that is entrusted to their care and custody and  
2 all money not immediately necessary for the public uses of the  
3 counties, municipalities or school districts not invested or  
4 deposited in banks, savings and loan associations or credit  
5 unions in:

6 (1) bonds or negotiable securities of the  
7 United States, the state or a county, municipality or school  
8 district that has a taxable valuation of real property for the  
9 last preceding year of at least one million dollars  
10 (\$1,000,000) and that has not defaulted in the payment of any  
11 interest or sinking fund obligation or failed to meet any bonds  
12 at maturity at any time within five years last preceding; or

13 (2) securities that are issued and backed by  
14 the full faith and credit of the United States government or  
15 issued by its agencies or instrumentalities.

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

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

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

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

24 (3) shares of pooled investment funds managed  
25 by the state investment officer, as provided in Subsection E of

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1 Section 6-8-7 NMSA 1978; provided that the board of finance of  
2 the county or municipality may allow reasonable administrative  
3 and investment expenses to be paid directly from the income or  
4 assets of these investments.

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

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1 investment. As used in this subsection, "local public body"  
2 includes all political subdivisions of the state and agencies,  
3 instrumentalities and institutions thereof; provided that home  
4 rule municipalities that prior to July 1, 1994 had enacted  
5 ordinances authorizing the investment of repurchase agreements  
6 may continue investment in repurchase agreements pursuant to  
7 those ordinances.

8 I. The state treasurer, with the advice and consent  
9 of the state board of finance, may invest money held in demand  
10 deposits and not immediately needed for the operation of state  
11 government and money held in the local government investment  
12 pool, except as provided in Section 6-10-10.1 NMSA 1978. The  
13 investments may be made in securities that are issued and  
14 backed by the full faith and credit of the United States  
15 government or issued by its agencies or instrumentalities.

16 J. The state treasurer, with the advice and consent  
17 of the state board of finance, may also invest in contracts for  
18 the present purchase and resale at a specified time in the  
19 future, not to exceed one year or, in the case of bond  
20 proceeds, not to exceed three years, of specific securities at  
21 specified prices at a price differential representing the  
22 interest income to be earned by the state. Such contract shall  
23 not be invested in unless the contract is fully secured by  
24 obligations of the United States or its agencies or  
25 instrumentalities or by other securities backed by the United

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1 States or its agencies or instrumentalities having a market  
2 value of at least one hundred two percent of the amount of the  
3 contract. The securities required as collateral under this  
4 subsection shall be delivered to a third-party custodian bank  
5 pursuant to a contract with the state and the counterparty or  
6 to the fiscal agent of New Mexico or its designee. Delivery  
7 shall be made simultaneously with the transfer of funds or as  
8 soon as practicable, but no later than the same day that the  
9 funds are transferred.

10 K. The state treasurer, with the advice and consent  
11 of the state board of finance, may also invest in contracts for  
12 the temporary exchange of state-owned securities for the use of  
13 broker-dealers, banks or other recognized institutional  
14 investors in securities, for periods not to exceed one year for  
15 a specified fee rate. Such contract shall not be invested in  
16 unless the contract is fully secured by exchange of an  
17 irrevocable letter of credit running to the state, cash or  
18 equivalent collateral of at least one hundred two percent of  
19 the market value of the securities plus accrued interest  
20 temporarily exchanged. The collateral required by this  
21 subsection shall be delivered to the state of New Mexico or its  
22 designee simultaneously with the transfer of funds or as soon  
23 as practicable, but no later than the same day that the state-  
24 owned securities are transferred.

25 L. Neither of the contracts in Subsection J or K of

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1 this section shall be invested in unless the contracting bank,  
2 brokerage firm or recognized institutional investor has a net  
3 worth in excess of five hundred million dollars (\$500,000,000).

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

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

11 (2) medium-term notes and corporate notes with  
12 a maturity not exceeding five years that are rated A or its  
13 equivalent or better by a nationally recognized rating service  
14 and that are issued by a corporation organized and operating in  
15 the United States; or

16 (3) an asset-backed obligation with a maturity  
17 not exceeding five years that is rated AAA or its equivalent by  
18 a nationally recognized rating service.

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

21 (1) shares of an open-ended diversified  
22 investment company that:

23 (a) is registered with the United States  
24 securities and exchange commission;

25 (b) complies with the diversification,

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1 quality and maturity requirements of Rule 2a-7, or any  
2 successor rule, of the United States securities and exchange  
3 commission applicable to money market mutual funds; and

4 (c) assesses no fees pursuant to Rule  
5 12b-1, or any successor rule, of the United States securities  
6 and exchange commission, no sales load on the purchase of  
7 shares and no contingent deferred sales charge or other similar  
8 charges, however designated, provided that the state shall not,  
9 at any time, own more than five percent of a money market  
10 mutual fund's assets;

11 (2) individual, common or collective trust  
12 funds of banks or trust companies that invest in United States  
13 fixed-income securities or debt instruments authorized pursuant  
14 to Subsections I, J and M of this section, provided that the  
15 investment manager has assets under management of at least one  
16 billion dollars (\$1,000,000,000) and the investments made by  
17 the state treasurer pursuant to this paragraph are less than  
18 five percent of the assets of the individual, common or  
19 collective trust fund;

20 (3) the local government investment pool  
21 managed by the office of the state treasurer. Investments made  
22 pursuant to this paragraph shall, in aggregate, be no more than  
23 thirty-five percent of the total assets of the local government  
24 investment pool;

25 (4) securities issued by the state of New

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1 Mexico, its agencies, institutions, counties, municipalities,  
2 school districts, community college districts or other  
3 subdivisions of the state, or as otherwise provided by law; or  
4 (5) securities issued by states other than New  
5 Mexico or governmental entities in states other than New  
6 Mexico.

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

18 P. As used in this section:

19 (1) "school board" means a local school board  
20 or governing body of a charter school that has been designated  
21 by the public education department as a board of finance as  
22 provided in Section 22-8-38 NMSA 1978; and

23 (2) "school board designee" means the school  
24 district or charter school employee who has been designated by  
25 the superintendent of a school district or head administrator

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1 of a charter school to handle the funds of the school board or  
2 governing board."

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

5 "6-10-36. PUBLIC MONEY DEPOSITS OF CERTAIN GOVERNMENTAL  
6 UNITS--DISTRIBUTION--INTEREST.--

7 A. All public money, except that in the custody of  
8 the state treasurer, institutions of higher education,  
9 technical and vocational institutes, incorporated  
10 municipalities and counties that have adopted home rule  
11 charters as authorized by the constitution of New Mexico and  
12 local school boards and governing bodies of charter schools  
13 that have been designated as boards of finance, shall be  
14 deposited in qualified depositories in accordance with the  
15 terms of this section or invested as otherwise provided by law.

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

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1 boundaries of the governmental unit, one or more banks, savings  
2 and loan associations or credit unions within the county in  
3 which the principal office of the governmental unit is located  
4 may be so designated, but credit union deposits shall be  
5 insured by an agency of the United States.

6 C. As much as practicable, public money placed in  
7 interest-bearing deposits in banks and savings and loan  
8 associations shall be equitably distributed among all banks and  
9 savings and loan associations having their main or staffed  
10 branch offices within the geographical boundaries of the  
11 governmental unit that have qualified as public depositories by  
12 reason of insurance of the account by an agency of the United  
13 States or by depositing collateral security or by giving bond  
14 as provided by law and that desire a deposit of public money  
15 pursuant to this section. The deposits shall be in the  
16 proportion that each bank's or savings and loan association's  
17 deposits bears to the total deposits of all banks and savings  
18 and loan associations that have their main office or staffed  
19 branch office within the geographical boundaries of the  
20 governmental unit and that desire a deposit of public money  
21 pursuant to this section. The deposits of the main office of a  
22 savings and loan association and its staffed branch offices  
23 within the geographical boundaries of a governmental unit is  
24 the total deposits of the association multiplied by the  
25 percentage that deposits of the main office and the staffed

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1 branch offices located within the geographical boundaries of  
2 the governmental unit are of the total deposits of the  
3 association, net of any public fund deposits. The deposits of  
4 each staffed branch office or aggregate of staffed branch  
5 offices of a savings and loan association located outside the  
6 geographical boundaries of the governmental unit in which the  
7 main office is located is the total deposits of the association  
8 multiplied by the percentage that deposits of the branch or the  
9 aggregate of branches located outside the geographical  
10 boundaries of the governmental unit in which the main office is  
11 located are of the total deposits of the association, net of  
12 any public fund deposits. The director of the financial  
13 institutions division of the regulation and licensing  
14 department shall promulgate a formula for determining the  
15 deposits of banks' main offices and branches for the purposes  
16 of distribution of public money as provided for by this  
17 section.

18 D. Public money may be placed at the discretion of  
19 the designated board of finance or treasurer in interest-  
20 bearing deposits in credit unions having their main or staffed  
21 branch offices within the geographical boundaries of the  
22 governmental unit to the extent the deposits are insured by an  
23 agency of the United States.

24 E. The rate of interest for all public money  
25 deposited in interest-bearing accounts in banks, savings and

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1 loan associations and credit unions shall be set by the state  
2 board of finance, but in no case shall the rate of interest be  
3 less than one hundred percent of the asked price on United  
4 States treasury bills of the same maturity on the day of  
5 deposit. Any bank or savings and loan association that fails  
6 to pay the minimum rate of interest at the time of deposit  
7 provided for in this subsection for any respective deposit  
8 forfeits its right to an equitable share of that deposit under  
9 this section. If the deposit is part or all of the proceeds of  
10 a bond issue and the interest rate prescribed in this  
11 subsection materially exceeds the rate of interest of the  
12 bonds, the interest rate prescribed by this subsection shall be  
13 reduced on that deposit to an amount not materially exceeding  
14 the interest rate of the bonds if the bond issue would lose its  
15 tax-exempt status pursuant to the provisions of the Internal  
16 Revenue Code of 1986, as amended.

17 F. Public money in excess of that for which banks,  
18 savings and loan associations and credit unions within the  
19 geographical boundaries of the governmental unit have qualified  
20 may be deposited in qualified depositories in other areas  
21 within the state under the same requirements for payment of  
22 interest as if the money were deposited within the geographical  
23 boundaries of the governmental unit or may be invested as  
24 provided by law.

25 G. The department of finance and administration

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1 may monitor the deposits of public money by governmental  
2 units to assure full compliance with the provisions of this  
3 section."

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

6 "22-8-40. DEPOSIT OF PUBLIC SCHOOL FUNDS--  
7 DISTRIBUTION--INTEREST.--

8 A. All public money in the custody of school  
9 districts or state-chartered charter schools that have been  
10 designated as boards of finance shall be deposited in  
11 qualified depositories in accordance with the terms of this  
12 section.

13 B. Deposits of funds of the school district or  
14 state-chartered charter school may be made in noninterest-  
15 bearing checking accounts in one or more banks, savings and  
16 loan associations or credit unions, as long as the credit  
17 union deposits are insured by an agency of the United States,  
18 located within the geographical limits of the school  
19 district.

20 C. Deposits of funds of the school district or  
21 state-chartered charter school may be made in interest-  
22 bearing checking accounts, commonly known as "NOW" accounts,  
23 in one or more banks, savings and loan associations or credit  
24 unions, as long as the credit union deposits are insured by  
25 an agency of the United States, located within the

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1 geographical limits of the school district.

2 D. As much as practicable, public money placed in  
3 interest-bearing deposits, in banks and savings and loan  
4 associations, other than interest-bearing checking accounts  
5 as defined in Subsection C of this section, shall be  
6 equitably distributed among all banks and savings and loan  
7 associations having their main or [~~manned~~] staffed branch  
8 offices within the geographical boundaries of the school  
9 district that have qualified as public depositories by reason  
10 of insurance of the account by an agency of the United States  
11 or by depositing collateral security or by giving bond as  
12 provided by law in the proportion that each such bank's or  
13 savings and loan association's net worth bears to the total  
14 net worth of all banks and savings and loan associations  
15 having their main office or a [~~manned~~] staffed branch office  
16 within the geographical boundaries of the school district.

17 The net worth of the main office of a savings and loan  
18 association and its [~~manned~~] staffed branch offices within  
19 the geographical boundaries of a school district is the total  
20 net worth of the association multiplied by the percentage  
21 that deposits of the main office and the [~~manned~~] staffed  
22 branch offices located within the geographical boundaries of  
23 the school district are of the total deposits of the  
24 association. The net worth of each [~~manned~~] staffed branch  
25 office or aggregate of [~~manned~~] staffed branch offices of a

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1 savings and loan association located outside the geographical  
2 boundaries of the school district in which the main office is  
3 located is the total net worth of the association multiplied  
4 by the percentage that deposits of the branch or aggregate of  
5 branches located outside the geographical boundaries of the  
6 school district in which the main office is located are of  
7 the total deposits of the association. The director of the  
8 financial institutions division of the regulation and  
9 licensing department shall promulgate a formula for  
10 determining the net worth of banks' main offices and branches  
11 for the purposes of distribution of public money as provided  
12 for by this section. "Net worth" means assets less  
13 liabilities as reported by such banks and savings and loan  
14 associations on their most recent semiannual reports to the  
15 state or federal supervisory authority having jurisdiction.

16 E. Notwithstanding the provisions of Subsection D  
17 of this section, public money may be placed in interest-  
18 bearing deposits, other than interest-bearing checking  
19 accounts as defined in Subsection C of this section, at the  
20 discretion of the board of finance, in credit unions having  
21 their main or ~~main~~ staffed branch offices within the  
22 geographical boundaries of the school district to the extent  
23 such deposits are insured by an agency of the United States.

24 F. The rate of interest for all public money  
25 deposited in interest-bearing accounts in banks, savings and

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1 loan associations and credit unions shall be set by the state  
2 board of finance, but in no case shall the rate of interest  
3 be less than one hundred percent of the asked price on United  
4 States treasury bills of the same maturity on the date of  
5 deposit. Any bank or savings and loan association that fails  
6 to pay the minimum rate of interest at the time of deposit  
7 provided for herein for any respective deposit forfeits its  
8 right to an equitable share of that deposit under this  
9 section. If the deposit is part or all of the proceeds of a  
10 bond issue and the interest rate prescribed in this  
11 subsection materially exceeds the rate of interest of the  
12 bonds, the interest rate prescribed by this subsection shall  
13 be reduced on the deposit to an amount not materially  
14 exceeding the interest rate of the bonds if the bond issue  
15 would lose its tax-exempt status under Section 103 of the  
16 United States Internal Revenue Code [~~of 1954~~], as amended.

17 G. Public money in excess of that for which banks  
18 and savings and loan associations within the geographical  
19 boundaries of the school district have qualified may be  
20 deposited in qualified depositories, including credit unions,  
21 in other areas within the state under the same requirements  
22 for payment of interest as if the money were deposited within  
23 the geographical boundaries of the school district.

24 H. The board of finance of the school district or  
25 state-chartered charter school may temporarily invest money

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1 held in demand deposits and not immediately needed for the  
2 operation of the school district or state-chartered charter  
3 school. Such temporary investments shall be made only in  
4 securities that are issued by the state or by the United  
5 States government, or by their departments or agencies, and  
6 that are either direct obligations of the state or the United  
7 States or are backed by the full faith and credit of those  
8 governments.

9 I. The department of finance and administration  
10 may monitor the deposits of public money by school districts  
11 or state-chartered charter schools to assure full compliance  
12 with the provisions of this section."