

1 SENATE BILL 174

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

3 INTRODUCED BY

4 Peter Wirth

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10 AN ACT

11 RELATING TO PUBLIC FINANCES; MAKING ADMINISTRATIVE CHANGES
12 APPLICABLE TO THE STATE INVESTMENT COUNCIL, STATE INVESTMENT
13 OFFICER AND INVESTMENT OFFICE AND LIMITING THEIR LIABILITY;
14 ELIMINATING THE PRIVATE EQUITY INVESTMENT ADVISORY COMMITTEE;
15 PROVIDING FOR INDEMNIFICATION.

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

18 SECTION 1. Section 6-8-1 NMSA 1978 (being Laws 1957,
19 Chapter 179, Section 1, as amended by Laws 1997, Chapter 135,
20 Section 1 and by Laws 1997, Chapter 183, Section 1) is amended
21 to read:

22 "6-8-1. DEFINITIONS.--As used in Chapter 6, Article 8
23 NMSA 1978:

24 [~~A. "secretary" means the secretary of finance and~~
25 ~~administration;~~

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1 ~~B. "department" means the department of finance and~~
2 ~~administration;~~

3 ~~C. "land grant permanent funds" means those funds~~
4 ~~derived from lands under the direction, control, care and~~
5 ~~disposition of the commissioner of public lands conferred by~~
6 ~~Article 13, Sections 1 and 2 of the constitution of New Mexico;~~
7 ~~and~~

8 ~~D.]~~ A. "council" means the state investment
9 council;

10 B. "department" means the department of finance and
11 administration;

12 C. "land grant permanent funds" means the permanent
13 school fund established pursuant to the provisions of Article
14 12, Section 2 of the constitution of New Mexico and all other
15 permanent funds derived from lands granted or confirmed to the
16 state by the act of congress of June 20, 1910, entitled "An act
17 to enable the people of New Mexico to form a constitution and
18 state government and be admitted into the union on an equal
19 footing with the original states";

20 D. "permanent funds" means the land grant permanent
21 funds, severance tax permanent fund, tobacco settlement
22 permanent fund and water trust fund;

23 E. "secretary" means the secretary of finance and
24 administration;

25 F. "severance tax permanent fund" means the fund

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1 established pursuant to the provisions of Article 8, Section 10
2 of the constitution of New Mexico;

3 G. "tobacco settlement permanent fund" means the
4 fund established pursuant to the provisions of Section 6-4-9
5 NMSA 1978; and

6 H. "water trust fund" means the fund established
7 pursuant to the provisions of Article 16, Section 6 of the
8 constitution of New Mexico."

9 SECTION 2. Section 6-8-3 NMSA 1978 (being Laws 1957,
10 Chapter 179, Section 3, as amended) is amended to read:

11 "6-8-3. COUNCIL TERMS AND QUALIFICATIONS.--

12 A. Members of the council appointed pursuant to
13 Paragraphs (6) and (7) of Subsection A of Section 6-8-2 NMSA
14 1978, with the advice and consent of the senate, shall serve
15 for staggered terms of five years. Members of the council
16 shall serve until their successors are appointed and have
17 qualified.

18 B. The members of the council appointed pursuant to
19 Paragraphs (6) and (7) of Subsection A of Section 6-8-2 NMSA
20 1978 shall be qualified by competence and no less than ten
21 [~~years~~] years' experience in the field of investment
22 management, investment risk management, corporate governance,
23 investment accounting or finance. A member of the council
24 shall not have had any contracts to do business with the [~~state~~
25 ~~investment~~] council, the investment office, the office of the

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1 state treasurer, the educational retirement board, the public
2 employees retirement association, the New Mexico finance
3 authority or the state board of finance for a period of two
4 calendar years prior to the person's appointment to the council
5 and shall not enter into any contracts to do business with any
6 of the named state agencies or instrumentalities for a period
7 of two calendar years after the end of the term for which the
8 member was appointed. Members of the council and officers and
9 employees of the council shall be governed by the provisions of
10 the Governmental Conduct Act. Nothing in this section or in
11 the Governmental Conduct Act shall be construed as prohibiting
12 an officer of a financial institution from participating as a
13 member of the council in setting general policies of the
14 council, nor shall any provision of the Governmental Conduct
15 Act prohibit the council or the state treasurer from depositing
16 funds under the jurisdiction of the council in any financial
17 institution. A council member shall not hold an office or
18 employment in a political party.

19 C. The member appointed pursuant to Paragraph (5)
20 of Subsection A of Section 6-8-2 NMSA 1978 shall serve at the
21 pleasure of the governor. A member of the council appointed
22 pursuant to Paragraphs (6) and (7) of Subsection A of Section
23 6-8-2 NMSA 1978 may be removed from the council by the
24 appointing person or entity, for failure to attend three
25 consecutive meetings or other cause, in the manner provided for

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1 removal of members of boards of regents under Article 12,
2 Section 13 of the constitution of New Mexico. A vacancy in the
3 membership of the council occurring other than by expiration of
4 term shall be filled in the same manner as the original
5 appointment but for the unexpired term only."

6 SECTION 3. Section 6-8-4 NMSA 1978 (being Laws 1957,
7 Chapter 179, Section 4, as amended) is amended to read:

8 "6-8-4. INVESTMENT OFFICE--STATE INVESTMENT OFFICER--
9 TERMS.--

10 A. There is established an "investment office".
11 The chief administrative officer of the office shall be known
12 as the "state investment officer".

13 B. The state investment officer shall be appointed
14 by the council. The state investment officer shall devote the
15 officer's entire time and attention to the duties of that
16 office and shall not engage in any other occupation or
17 profession or hold any other public office, appointive or
18 elective. The state investment officer shall be ~~[a person]~~ an
19 individual qualified by ~~[training and]~~ at least ten years of
20 investment and executive experience to direct the work of the
21 investment office ~~[and shall have had at least five years'~~
22 ~~professional experience as an investment officer]~~. The state
23 investment officer shall appoint a deputy state investment
24 officer, with at least seven years' professional experience in
25 the field of institutional investment management, to serve as

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1 the chief investment officer. The state investment officer
2 shall receive a salary to be determined by the [~~state~~
3 ~~investment~~] council [~~but in no case less than fifty thousand~~
4 ~~dollars (\$50,000) annually~~].

5 C. The state investment officer shall serve [~~for an~~
6 ~~initial term of two years beginning July 1, 1981 and thereafter~~
7 ~~for terms of four years. The state investment officer may be~~
8 ~~removed from office by the council for cause~~] at the will of
9 the council."

10 SECTION 4. Section 6-8-5 NMSA 1978 (being Laws 1957,
11 Chapter 179, Section 5, as amended) is amended to read:

12 "6-8-5. BOND--STAFF--BUDGET.--

13 A. Before the state investment officer or other
14 responsible employee of the investment office enters upon [~~his~~]
15 the officer's or employee's duties, the secretary shall require
16 an individual bond or include the state investment officer and
17 [~~other responsible~~] all employees of the investment office
18 under a blanket bond for an amount and for a coverage deemed
19 best to protect the state's interest. The bond premiums shall
20 be paid by the state.

21 B. The state investment officer shall annually
22 prepare a budget for administering and investing all funds
23 managed by the investment office, which shall be reviewed and
24 approved by the council. Any funds provided for the operating
25 budget of the investment office shall be appropriated from the

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1 assets of the land grant permanent funds, the severance tax
2 permanent fund, funds available for investment pursuant to
3 Subsection [G] I of Section 6-8-7 NMSA 1978 or any other funds
4 managed by the investment office, as authorized by law
5 ~~[however, in regard to the land grant permanent funds,~~
6 ~~appropriation shall be made from earnings on investments of the~~
7 ~~land grant permanent funds before distribution to the income~~
8 ~~funds during the period prior to the date the United States~~
9 ~~congress consents to the provisions of Constitutional Amendment~~
10 ~~1 approved at the 1996 general election].~~

11 C. Amounts budgeted or appropriated from the land
12 grant permanent funds and the severance tax permanent fund for
13 the costs of administering and investing those funds shall be
14 in addition to the amounts distributed to the beneficiaries of
15 the land grant permanent funds and to the general fund from the
16 severance tax permanent fund as provided by law ~~[provided that~~
17 ~~amounts budgeted or appropriated from the land grant permanent~~
18 ~~funds shall be made from earnings on investments of the funds~~
19 ~~before distribution to the income funds during the period prior~~
20 ~~to the date the United States congress consents to the~~
21 ~~provisions of Constitutional Amendment 1 approved at the 1996~~
22 ~~general election].~~

23 D. The state investment officer shall appoint all
24 employees of the investment office."

25 SECTION 5. Section 6-8-6 NMSA 1978 (being Laws 1957,

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1 Chapter 179, Section 6, as amended) is amended to read:

2 "6-8-6. TRANSFER OF INVESTMENT POWERS.--

3 A. The functions, powers and duties vested by law
4 relating to the investment or reinvestment of money and the
5 purchase, sale or exchange of investments or securities of the
6 permanent ~~[fund]~~ funds are ~~[transferred]~~ delegated to the state
7 investment officer under the supervision of the council. ~~[The~~
8 ~~state treasurer shall maintain]~~ Custody of the ~~[state]~~
9 permanent ~~[fund but shall at all times render the fund or any~~
10 ~~part of it available for investment]~~ funds shall be maintained
11 by a custodian bank selected and overseen, in accordance with
12 the provisions of ~~[Sections 6-8-1 through 6-8-18]~~ Subsection H
13 of Section 6-8-7 NMSA 1978, by the state investment officer and
14 the council.

15 B. Any provision of existing law requiring or
16 designating an elected state official to serve by virtue of
17 ~~[his]~~ the official's office in an active or advisory capacity,
18 other than as a member of the council, concerning the
19 investment of the ~~[state]~~ permanent ~~[fund shall be]~~ funds is
20 inoperative."

21 **SECTION 6.** Section 6-8-7 NMSA 1978 (being Laws 1957,
22 Chapter 179, Section 7, as amended) is amended to read:

23 "6-8-7. POWERS AND DUTIES OF THE STATE INVESTMENT COUNCIL
24 AND STATE INVESTMENT OFFICER--INVESTMENT POLICY--INVESTMENT
25 MANAGERS.--

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1 A. Subject to the limitations, conditions and
2 restrictions contained in policymaking regulations or
3 resolutions adopted by the council, the council may make
4 purchases, sales, exchanges, investments and reinvestments of
5 the assets of all funds in accordance with the Uniform Prudent
6 Investor Act. The state investment officer and the council are
7 trustees of all funds under their control and shall see that
8 money invested is at all times handled in the best interests of
9 the state. The council may delegate administrative and
10 investment-related functions to the state investment officer.

11 B. The state investment officer shall formulate and
12 recommend to the council for approval investment regulations or
13 resolutions pertaining to the kind or nature of investments and
14 limitations, conditions and restrictions upon the methods,
15 practices or procedures for investment, reinvestment, purchase,
16 sale or exchange transactions that should govern the activities
17 of the investment office.

18 C. The council shall meet at least [~~once each~~
19 ~~month~~] ten times per year, and as often as exigencies may
20 demand, to consult with the state investment officer concerning
21 the work of the investment office. The council shall have
22 access to all files and records of the investment office and
23 shall require the state investment officer to report on and
24 provide information necessary to the performance of council
25 functions. The council may hire [~~one or more~~] investment

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1 management or consulting firms to advise the council with
2 respect to the council's [~~overall~~] investment [~~plan~~] decisions
3 for the investment of [~~all~~] funds managed by the investment
4 office and pay reasonable compensation for such [~~advisory~~]
5 management or consulting services from the assets of the
6 applicable funds, subject to budgeting and appropriation by the
7 legislature. The terms of any such investment management or
8 consulting services contract shall incorporate the statutory
9 requirements for investment of funds under the council's
10 jurisdiction. Prior to being hired, a prospective investment
11 management, advisory or consulting services firm shall submit
12 to the council a disclosure detailing all campaign
13 contributions made within the last eight years by the firm or
14 the partners or employees of the firm to any member of the
15 council, or to a political committee or other entity that is
16 intended to aid or promote the nomination or election of any
17 candidate to a political office if the political committee or
18 entity is:

19 (1) established by a council member or the
20 council member's agent;

21 (2) established in consultation with or at the
22 request of a council member or the council member's agent; or

23 (3) controlled by a council member or the
24 council member's agent.

25 D. The council shall provide an opportunity for

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1 public comment at meetings of the council. Advance notice of
2 meetings shall be published on the council's web site and in a
3 newspaper of general circulation at least ten days in advance
4 of the meeting.

5 E. All funds managed by the state investment
6 officer shall be managed in accordance with the Uniform Prudent
7 Investor Act. The council may ~~[employ investment management~~
8 ~~services to invest the funds and may pay reasonable~~
9 ~~compensation for investment management services from the assets~~
10 ~~of the applicable funds, subject to budgeting and appropriation~~
11 ~~by the legislature]~~ form and use committees to study and make
12 recommendations to the council. Prior to commencing work for
13 the council, a committee member who is not a member of the
14 council shall submit to the council a disclosure detailing all
15 campaign contributions made within the last eight years to any
16 member of the council or to a political committee or other
17 entity that is intended to aid or promote the nomination or
18 election of any candidate to a political office if the
19 political committee or entity is:

20 (1) established by a council member or the
21 council member's agent;

22 (2) established in consultation with or at the
23 request of a council member or the council member's agent; or

24 (3) controlled by a council member
25 or the council member's agent.

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1 F. Fiduciaries of the permanent funds are:

2 (1) the council;

3 (2) the state investment officer and
4 investment office staff;

5 (3) any person providing investment advice to
6 the council [~~or~~], the state investment officer or investment
7 office staff for [~~a~~] an investment management, advisory or
8 consulting services fee [~~or other compensation~~]; and

9 (4) all persons exercising discretionary
10 authority over or control of funds under the management of the
11 council [~~are fiduciaries~~].

12 G. The council may contract for legal services for
13 litigation on a contingent or partly contingent fee basis,
14 subject to an expedited solicitation process devised and
15 approved by the council; provided that:

16 (1) amounts recovered by the legal services
17 contractor shall be deposited in the state investment council
18 suspense fund;

19 (2) the council shall submit each proposed
20 contract to the attorney general and the department for review
21 of the contingency fee. The attorney general's and the
22 department's review shall take into account the complexity of
23 the factual and legal issues presented by the claims to be
24 pursued under the contract. If the attorney general or the
25 department advises the council that the proposed contingency

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1 fee is not reasonable, the council may nevertheless approve the
2 contract and the contingency fee by a majority vote of its
3 members; and

4 (3) each prospective legal services contractor
5 seeking to represent the council on a contingent or partly
6 contingent fee basis shall file with the council the disclosure
7 required by Section 13-1-191.1 NMSA 1978 disclosing all
8 campaign contributions made to the governor, attorney general,
9 state treasurer or any member of the council, or to a political
10 committee that is intended to aid or promote the nomination or
11 election of any candidate to a state office if the committee
12 is:

13 (a) established by any of the foregoing
14 persons or their agents;

15 (b) established in consultation with or
16 at the request of any of the foregoing persons or their agents;
17 or

18 (c) controlled by one of the foregoing
19 persons or their agents.

20 H. The council may select and contract for the
21 services of one or more custodian banks for all funds under the
22 council's management. For the purpose of this subsection,
23 "custodian bank" means a financial institution with the general
24 fiduciary duties to manage, control and collect the assets of
25 an investment fund, including receiving all deposits and paying

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1 all disbursements as directed by staff, safekeeping of assets,
2 coordination of asset transfers, timely settlement of
3 securities transactions and accurate and timely reporting of
4 the assets by individual account and in total.

5 I. For funds available for investment for more than
6 one year, the council may contract with any state agency to
7 provide investment advisory or investment management services,
8 separately or through a pooled investment fund; provided that
9 the state agency enters into a joint powers agreement with the
10 council and that the state agency pays at least the direct cost
11 of such services. Notwithstanding any statutory provision
12 governing state agency investments, the council may invest
13 funds available from a state agency pursuant to a joint powers
14 agreement in any type of investment permitted for the land
15 grant permanent funds under the prudent investor rule. In
16 performing investment services for a state agency, the council
17 and the state investment officer and investment office staff
18 are exempt from the New Mexico Uniform Securities Act. As used
19 in this subsection, "state agency" means any branch, agency,
20 department, board, instrumentality, institution or political
21 subdivision of the state, the New Mexico finance authority, the
22 New Mexico mortgage finance authority and any tax-exempt
23 private endowment entity whose sole beneficiary is a state
24 agency or whose beneficiaries are students attending a public
25 educational institution in the state.

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1 J. The state investment officer shall provide
2 quarterly performance reports to the legislative finance
3 committee. Annually, the state investment officer shall ratify
4 and provide written investment policies, including any
5 amendments, to the legislative finance committee.

6 K. Council members, the state investment officer
7 and investment office staff and committee members appointed by
8 the council, jointly and severally, shall be indemnified by the
9 state, out of the permanent funds, from all claims, demands,
10 suits, actions, damages, judgments, costs, charges and
11 expenses, including court costs and attorney fees, against all
12 claims, liability, losses or damages arising from any decisions
13 made or actions taken while acting within the scope of duty and
14 pursuant to law as a council member, the state investment
15 officer, investment office staff or a committee member
16 appointed by the council. Following indemnification, if it is
17 shown that the indemnified person acted fraudulently or with
18 intentional malice, the state shall have the right to recover
19 from the indemnified person any amount expended under this
20 subsection."

21 SECTION 7. Section 6-8-11 NMSA 1978 (being Laws 1957,
22 Chapter 179, Section 11, as amended) is amended to read:

23 "6-8-11. CUSTODY OF SECURITIES.--Securities purchased or
24 held by the state investment officer or the [~~state investment~~]
25 council shall be in the custody of [~~the state treasurer who~~

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1 ~~may, with the approval of the secretary, deposit with a bank or~~
2 ~~trust company the securities for safekeeping and servicing] a~~
3 custodian bank contracted pursuant to the provisions of
4 Subsection H of Section 6-8-7 NMSA 1978."

5 SECTION 8. Section 6-8-13 NMSA 1978 (being Laws 1957,
6 Chapter 179, Section 13, as amended) is amended to read:

7 "6-8-13. RECORD OF INVESTMENTS.--The investment
8 [~~division~~] office shall keep accurate and complete records and
9 accounts concerning the state investment portfolio."

10 SECTION 9. Section 6-8-14 NMSA 1978 (being Laws 1957,
11 Chapter 179, Section 14, as amended) is amended to read:

12 "6-8-14. MONTHLY REPORTS.--No later than [~~ten~~] twenty
13 days after the [~~close~~] end of each month, the state investment
14 officer shall submit to [~~the secretary and~~] the [~~state~~
15 ~~investment~~] council a report of the operations of the
16 investment office during the past month. Each report shall
17 [~~give a complete statement of the state investment portfolio as~~
18 ~~of the time of the report and, in addition, shall include a~~
19 ~~detailed summary of the month's investment, reinvestment,~~
20 ~~purchase, sale and exchange transactions, setting forth the~~
21 ~~investments bought, sold or exchanged, the dates thereof, the~~
22 ~~prices paid or obtained, the names of the dealers involved,~~
23 ~~fees paid for each transaction, disclosure of contractor~~
24 ~~arrangements and a statement of the funds or accounts referred~~
25 ~~to herein. The reports shall also be circulated to a mailing~~

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1 ~~list of investment bankers and brokers recommended by the~~
2 ~~council]~~ include a schedule of cumulative fiscal year actual
3 and budgeted expenditures and a monthly summary of
4 contributions, distributions, income and net gains or losses
5 for each permanent fund and investment pool. The reports shall
6 be published on the web [~~sites~~] site of the council [~~the~~
7 ~~legislature and the department of finance and administration]~~
8 and the sunshine portal and shall be open for inspection to the
9 public and the press in the [~~office of the state~~] investment
10 [~~officer~~] office."

11 SECTION 10. Section 7-27-5.15 NMSA 1978 (being Laws 1990,
12 Chapter 126, Section 5, as amended) is amended to read:

13 "7-27-5.15. NEW MEXICO PRIVATE EQUITY FUNDS AND BUSINESS
14 INVESTMENTS.--

15 A. No more than nine percent of the market value of
16 the severance tax permanent fund may be invested in New Mexico
17 private equity funds or New Mexico businesses under this
18 section.

19 B. In making investments pursuant to Subsection A
20 of this section, the council shall make investments in New
21 Mexico private equity funds or New Mexico businesses whose
22 investments or enterprises enhance the economic development
23 objectives of the state.

24 C. The state investment officer shall make
25 investments pursuant to Subsection A of this section only upon

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1 approval of the council [~~upon review of the recommendation of~~
2 ~~the private equity investment advisory committee~~] and within
3 guidelines and policies established by the council.

4 D. As used in this section:

5 (1) "New Mexico business" means, in the case
6 of a corporation or limited liability company, a business with
7 its principal office and a majority of its full-time employees
8 located in New Mexico or, in the case of a limited partnership,
9 a business with its principal place of business and eighty
10 percent of its assets located in New Mexico; and

11 (2) "New Mexico private equity fund" means a
12 limited partnership, limited liability company or corporation
13 organized and operating in the United States and maintaining an
14 office staffed by a full-time investment officer in New Mexico
15 that:

16 (a) has as its primary business activity
17 the investment of funds in return for equity in or debt of
18 businesses for the purpose of providing capital for start-up,
19 expansion, product or market development, recapitalization or
20 similar business purposes;

21 (b) holds out the prospects for capital
22 appreciation from such investments;

23 (c) has at least one full-time manager
24 with at least three years of professional experience in
25 assessing the growth prospects of businesses or evaluating

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1 business plans and who has established permanent residency in
2 the state;

3 (d) is committed to investing or helps
4 secure investing by others, in an amount at least equal to the
5 total investment made by the state investment officer in that
6 fund pursuant to this section, in businesses with a principal
7 place of business in the state and that hold promise for
8 attracting additional capital from individual or institutional
9 investors nationwide for businesses in the state; and

10 (e) accepts investments only from
11 accredited investors as that term is defined in Section 2 of
12 the federal Securities Act of 1933, as amended (15 USCA Section
13 77(b)), and rules and regulations promulgated pursuant to that
14 section, or federally recognized Indian tribes, nations and
15 pueblos with at least five million dollars (\$5,000,000) in
16 overall investment assets.

17 E. The state investment officer is authorized to
18 make investments in New Mexico businesses to create new job
19 opportunities and to support new, emerging or expanding
20 businesses in a manner consistent with the constitution of New
21 Mexico if:

22 (1) the investments are made:

23 (a) in conjunction with cooperative
24 investment agreements with parties that have demonstrated
25 abilities and relationships in making investments in new,

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1 emerging or expanding businesses;

2 (b) in a New Mexico aerospace business
3 that has received an award from the United States government or
4 one of its agencies or instrumentalities: 1) in an amount, not
5 less than one hundred million dollars (\$100,000,000), that is
6 equal to at least ten times the investment from the severance
7 tax permanent fund; and 2) for the purpose of stimulating
8 commercial enterprises; or

9 (c) in a New Mexico business that: 1)
10 is established to perform technology transfer, research and
11 development, research commercialization, manufacturing,
12 training, marketing or public relations in any field of science
13 or technology, including but not limited to energy, security,
14 defense, aerospace, automotives, electronics,
15 telecommunications, computer and information science,
16 environmental science, biomedical science, life science,
17 physical science, materials science or nanoscience, using
18 research developed in whole or in part by a state institution
19 of higher education or a prime contractor designated as a
20 national laboratory by an act of congress that is operating a
21 facility in the state, or an affiliated entity; and 2) has an
22 agreement to operate the business on state lands;

23 (2) an investment in any one business does not
24 exceed ten percent of the amount available for investment
25 pursuant to this section; and

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1 (3) the investments represent no more than
2 fifty-one percent of the total investment capital in a
3 business; provided, however, that nothing in this subsection
4 prohibits the ownership of more than fifty-one percent of the
5 total investment capital in a New Mexico business if the
6 additional ownership interest:

7 (a) is due to foreclosure or other
8 action by the state investment officer pursuant to agreements
9 with the business or other investors in that business;

10 (b) is necessary to protect the
11 investment; and

12 (c) does not require an additional
13 investment of the severance tax permanent fund.

14 F. The state investment officer shall make a
15 commitment to the small business investment corporation
16 pursuant to the Small Business Investment Act to invest one
17 percent of the market value of the severance tax permanent fund
18 to create new job opportunities by providing capital for land,
19 buildings or infrastructure for facilities to support new or
20 expanding businesses and to otherwise make investments to
21 create new job opportunities to support new or expanding
22 businesses in a manner consistent with the constitution of New
23 Mexico. On July 1 of each year, the state investment officer
24 shall determine whether the invested capital in the small
25 business investment corporation is less than one percent of the

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1 market value of the severance tax permanent fund. If the
2 invested capital in the small business investment corporation
3 equals less than one percent of the market value of the
4 severance tax permanent fund, further commitments shall be made
5 until the invested capital is equal to one percent of the
6 market value of the fund.

7 G. The state investment officer shall report
8 semiannually on the New Mexico private equity investments made
9 pursuant to this section. Annually, a report shall be
10 submitted to the legislature prior to the beginning of each
11 regular legislative session and a second report no later than
12 October 1 each year to the legislative finance committee, the
13 revenue stabilization and tax policy committee and any other
14 appropriate interim committee. Each report shall provide the
15 amounts invested in each New Mexico private equity fund, as
16 well as information about the objectives of the funds, the
17 companies in which each fund is invested and how each
18 investment enhances the economic development objectives of
19 the state. Each report shall provide the amounts invested in
20 each New Mexico business."

21 SECTION 11. Section 7-27-5.26 NMSA 1978 (being Laws 2000
22 (2nd S.S.), Chapter 6, Section 2, as amended) is amended to
23 read:

24 "7-27-5.26. INVESTMENT IN FILMS TO BE PRODUCED IN NEW
25 MEXICO.--

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1 A. No more than six percent of the market value of
2 the severance tax permanent fund may be invested in New Mexico
3 film private equity funds or a New Mexico film project under
4 this section.

5 B. If an investment is made under this section, not
6 more than fifteen million dollars (\$15,000,000) of the amount
7 authorized for investment pursuant to Subsection A of this
8 section shall be invested in any one New Mexico film private
9 equity fund or any one New Mexico film project.

10 C. The state investment officer shall make
11 investments pursuant to this section only upon approval of the
12 [~~state investment~~] council after a review by [~~the private~~
13 ~~equity investment advisory committee and~~] the New Mexico film
14 division of the economic development department. The state
15 investment officer may make debt or equity investments pursuant
16 to this section only in New Mexico film projects or New Mexico
17 film private equity funds that invest only in film projects
18 that:

19 (1) are filmed wholly or substantially in New
20 Mexico;

21 (2) have shown to the satisfaction of the New
22 Mexico film division that a distribution contract is in place
23 with a reputable distribution company;

24 (3) have agreed that, while filming in New
25 Mexico, a majority of the production crew will be New Mexico

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1 residents;

2 (4) have posted a completion bond that has
3 been approved by the New Mexico film division; provided that a
4 completion bond shall not be required if the fund or project is
5 guaranteed pursuant to Paragraph (5) of this subsection; and

6 (5) have obtained a full, unconditional and
7 irrevocable guarantee of repayment of the invested amount in
8 favor of the severance tax permanent fund:

9 (a) from an entity that has a credit
10 rating of not less than Baa or BBB by a national rating agency;

11 (b) from a substantial subsidiary of an
12 entity that has a credit rating of not less than Baa or BBB by
13 a national rating agency;

14 (c) by providing a full, unconditional
15 and irrevocable letter of credit from a United States
16 incorporated bank with a credit rating of not less than A by a
17 national rating agency; or

18 (d) from a substantial and solvent
19 entity as determined by the [~~state investment~~] council in
20 accordance with its standards and practices; or

21 (6) if not guaranteed pursuant to Paragraph
22 (5) of this subsection, have obtained no less than one-third of
23 the estimated total production costs from other sources as
24 approved by the state investment officer.

25 D. The state investment officer may loan at a

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1 market rate of interest, with respect to an eligible New Mexico
2 film project, up to eighty percent of an expected and estimated
3 film production tax credit available to a film production
4 company pursuant to the provisions of Section 7-2F-1 NMSA 1978;
5 provided that the film production company agrees to name the
6 state investment officer as its agent for the purpose of filing
7 an application for the film production tax credit to which the
8 company is entitled if the company does not apply for the film
9 production tax credit. The New Mexico film division of the
10 economic development department shall determine the estimated
11 amount of a film production tax credit. The ~~[state investment]~~
12 council shall establish guidelines for the state investment
13 officer's initiation of a loan and the terms of the loan.

14 E. As used in this section:

15 (1) "film project" means a single media or
16 multimedia program, including advertising messages, fixed on
17 film, videotape, computer disc, laser disc or other similar
18 delivery medium from which the program can be viewed or
19 reproduced and that is intended to be exhibited in theaters;
20 licensed for exhibition by individual television stations,
21 groups of stations, networks, cable television stations or
22 other means or licensed for the home viewing market; and

23 (2) "New Mexico film private equity fund"
24 means any limited partnership, limited liability company or
25 corporation organized and operating in the United States that:

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(a) has as its primary business activity the investment of funds in return for equity in film projects produced wholly or partly in New Mexico;

(b) holds out the prospects for capital appreciation from such investments; and

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

SECTION 12. REPEAL.--Section 6-8-20 NMSA 1978 (being Laws 1987, Chapter 219, Section 3, as amended) is repealed.