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AN ACT

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

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

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

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

A. "council" means the state investment council;

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

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

1 states";

2 D. "permanent funds" means the land grant
3 permanent funds, severance tax permanent fund, tobacco
4 settlement permanent fund and water trust fund;

5 E. "secretary" means the secretary of finance and
6 administration;

7 F. "severance tax permanent fund" means the fund
8 established pursuant to the provisions of Article 8, Section
9 10 of the constitution of New Mexico;

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

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

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

18 "6-8-3. COUNCIL TERMS AND QUALIFICATIONS.--

19 A. Members of the council appointed pursuant to
20 Paragraphs (6) and (7) of Subsection A of Section 6-8-2
21 NMSA 1978, with the advice and consent of the senate, shall
22 serve for staggered terms of five years. Members of the
23 council shall serve until their successors are appointed and
24 have qualified.

25 B. The members of the council appointed pursuant

1 to Paragraphs (6) and (7) of Subsection A of Section 6-8-2
2 NMSA 1978 shall be qualified by competence and no less than
3 ten years' experience in the field of investment management,
4 investment risk management, corporate governance, investment
5 accounting or finance. A member of the council shall not
6 have had any contracts to do business with the council, the
7 investment office, the office of the state treasurer, the
8 educational retirement board, the public employees retirement
9 association, the New Mexico finance authority or the state
10 board of finance for a period of two calendar years prior to
11 the person's appointment to the council and shall not enter
12 into any contracts to do business with any of the named state
13 agencies or instrumentalities for a period of two calendar
14 years after the end of the term for which the member was
15 appointed. Members of the council and officers and employees
16 of the council shall be governed by the provisions of the
17 Governmental Conduct Act. Nothing in this section or in the
18 Governmental Conduct Act shall be construed as prohibiting an
19 officer of a financial institution from participating as a
20 member of the council in setting general policies of the
21 council, nor shall any provision of the Governmental Conduct
22 Act prohibit the council or the state treasurer from
23 depositing funds under the jurisdiction of the council in any
24 financial institution. A council member shall not hold an
25 office or employment in a political party.

1 C. The member appointed pursuant to Paragraph (5)
2 of Subsection A of Section 6-8-2 NMSA 1978 shall serve at the
3 pleasure of the governor. A member of the council appointed
4 pursuant to Paragraphs (6) and (7) of Subsection A of Section
5 6-8-2 NMSA 1978 may be removed from the council by the
6 appointing person or entity, for failure to attend three
7 consecutive meetings or other cause, in the manner provided
8 for removal of members of boards of regents under Article 12,
9 Section 13 of the constitution of New Mexico. A vacancy in
10 the membership of the council occurring other than by
11 expiration of term shall be filled in the same manner as the
12 original appointment but for the unexpired term only."

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

15 "6-8-4. INVESTMENT OFFICE--STATE INVESTMENT OFFICER--
16 TERMS.--

17 A. There is established an "investment office".
18 The chief administrative officer of the office shall be known
19 as the "state investment officer".

20 B. The state investment officer shall be appointed
21 by the council. The state investment officer shall devote
22 the officer's entire time and attention to the duties of that
23 office and shall not engage in any other occupation or
24 profession or hold any other public office, appointive or
25 elective. The state investment officer shall be an

1 individual qualified by at least ten years of investment and
2 executive experience to direct the work of the investment
3 office. The state investment officer shall appoint a deputy
4 state investment officer, with at least seven years'
5 professional experience in the field of institutional
6 investment management, to serve as the chief investment
7 officer. The state investment officer shall receive a salary
8 to be determined by the council.

9 C. The state investment officer shall serve at the
10 will of the council."

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

13 "6-8-5. BOND--STAFF--BUDGET.--

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

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

1 operating budget of the investment office shall be
2 appropriated by the legislature from the assets of the land
3 grant permanent funds, the severance tax permanent fund,
4 funds available for investment pursuant to Subsection I of
5 Section 6-8-7 NMSA 1978 or any other funds managed by the
6 investment office, as authorized by law.

7 C. Amounts budgeted or appropriated from the land
8 grant permanent funds and the severance tax permanent fund
9 for the costs of administering and investing those funds
10 shall be in addition to the amounts distributed to the
11 beneficiaries of the land grant permanent funds and to the
12 general fund from the severance tax permanent fund as
13 provided by law.

14 D. The state investment officer shall appoint all
15 employees of the investment office."

16 SECTION 5. Section 6-8-7 NMSA 1978 (being Laws 1957,
17 Chapter 179, Section 7, as amended) is amended to read:

18 "6-8-7. POWERS AND DUTIES OF THE STATE INVESTMENT
19 COUNCIL AND STATE INVESTMENT OFFICER--INVESTMENT POLICY--
20 INVESTMENT MANAGERS.--

21 A. Subject to the limitations, conditions and
22 restrictions contained in policymaking regulations or
23 resolutions adopted by the council, the council may make
24 purchases, sales, exchanges, investments and reinvestments of
25 the assets of all funds in accordance with the Uniform

1 Prudent Investor Act. The state investment officer and the
2 council are trustees of all funds under their control and
3 shall see that money invested is at all times handled in the
4 best interests of the state. The council may delegate
5 administrative and investment-related functions to the state
6 investment officer.

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

14 C. The council shall meet at least ten times per
15 year, and as often as exigencies may demand, to consult with
16 the state investment officer concerning the work of the
17 investment office. The council shall have access to all
18 files and records of the investment office and shall require
19 the state investment officer to report on and provide
20 information necessary to the performance of council
21 functions. The council may hire investment management or
22 consulting firms to advise the council with respect to the
23 council's investment decisions for the investment of funds
24 managed by the investment office and pay reasonable
25 compensation for such management or consulting services from

1 the assets of the applicable funds, subject to budgeting and
2 appropriation by the legislature. The terms of any such
3 investment management or consulting services contract shall
4 incorporate the statutory requirements for investment of
5 funds under the council's jurisdiction. Prior to being
6 hired, a prospective investment management, advisory or
7 consulting services firm shall submit to the council a
8 disclosure detailing all campaign contributions made within
9 the last two years by the firm or the principals of the firm
10 to any member of the council, or to a political committee or
11 other entity that is intended to aid or promote the
12 nomination or election of any council member to a political
13 office.

14 D. The council shall provide an opportunity for
15 public comment at meetings of the council. Advance notice of
16 meetings shall be published on the council's web site and in
17 a newspaper of general circulation at least ten days in
18 advance of the meeting.

19 E. All funds managed by the state investment
20 officer shall be managed in accordance with the Uniform
21 Prudent Investor Act. The council may form and use
22 committees to study and make recommendations to the council.
23 Prior to commencing work for the council, a committee member
24 who is not a member of the council shall submit to the
25 council a disclosure detailing all campaign contributions

1 made within the last two years to any member of the council
2 or to a political committee or other entity that is intended
3 to aid or promote the nomination or election of any council
4 member to a political office.

5 F. Fiduciaries of the permanent funds are:

6 (1) the council;

7 (2) the state investment officer and
8 investment office staff;

9 (3) any person providing investment advice
10 to the council, the state investment officer or investment
11 office staff for an investment management, advisory or
12 consulting services fee; and

13 (4) all persons exercising discretionary
14 authority over or control of funds under the management of
15 the council.

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

20 (1) amounts recovered by the legal services
21 contractor shall be deposited in the state investment council
22 suspense fund;

23 (2) the council shall submit each proposed
24 contract to the attorney general and the department for
25 review of the contingency fee. The attorney general's and

1 the department's review shall take into account the
2 complexity of the factual and legal issues presented by the
3 claims to be pursued under the contract. If the attorney
4 general or the department advises the council that the
5 proposed contingency fee is not reasonable, the council may
6 nevertheless approve the contract and the contingency fee by
7 a majority vote of its members; and

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

17 (a) established by any of the foregoing
18 persons or their agents;

19 (b) established in consultation with or
20 at the request of any of the foregoing persons or their
21 agents; or

22 (c) controlled by one of the foregoing
23 persons or their agents.

24 H. The council may select and contract for the
25 services of one or more custodian banks for all funds under

1 the council's management. For the purpose of this
2 subsection, "custodian bank" means a financial institution
3 with the general fiduciary duties to manage, control and
4 collect the assets of an investment fund, including receiving
5 all deposits and paying all disbursements as directed by
6 staff, safekeeping of assets, coordination of asset
7 transfers, timely settlement of securities transactions and
8 accurate and timely reporting of the assets by individual
9 account and in total.

10 I. For funds available for investment for more
11 than one year, the council may contract with any state agency
12 to provide investment advisory or investment management
13 services, separately or through a pooled investment fund;
14 provided that the state agency enters into a joint powers
15 agreement with the council and that the state agency pays at
16 least the direct cost of such services. Notwithstanding any
17 statutory provision governing state agency investments, the
18 council may invest funds available from a state agency
19 pursuant to a joint powers agreement in any type of
20 investment permitted for the land grant permanent funds under
21 the prudent investor rule. In performing investment services
22 for a state agency, the council and the state investment
23 officer and investment office staff are exempt from the
24 New Mexico Uniform Securities Act. As used in this
25 subsection, "state agency" means any branch, agency,

1 department, board, instrumentality, institution or political
2 subdivision of the state, the New Mexico finance authority,
3 the New Mexico mortgage finance authority and any tax-exempt
4 private endowment entity whose sole beneficiary is a state
5 agency or whose beneficiaries are students attending a public
6 educational institution in the state.

7 J. The state investment officer shall provide
8 quarterly performance reports to the legislative finance
9 committee. Annually, the state investment officer shall
10 ratify and provide written investment policies, including any
11 amendments, to the legislative finance committee.

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

1 any amount expended under this subsection."

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

4 "6-8-11. CUSTODY OF SECURITIES.--Securities purchased
5 or held by the state investment officer or the council shall
6 be in the custody of a custodian bank contracted pursuant to
7 the provisions of Subsection H of Section 6-8-7 NMSA 1978."

8 SECTION 7. Section 6-8-13 NMSA 1978 (being Laws 1957,
9 Chapter 179, Section 13, as amended) is amended to read:

10 "6-8-13. RECORD OF INVESTMENTS.--The investment office
11 shall keep accurate and complete records and accounts
12 concerning the state investment portfolio."

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

15 "6-8-14. MONTHLY REPORTS.--No later than twenty days
16 after the end of each month, the state investment officer
17 shall submit to the council a report of the operations of the
18 investment office during the past month. Each report shall
19 include a schedule of cumulative fiscal year actual and
20 budgeted expenditures and a monthly summary of contributions,
21 distributions, fees, income and net gains or losses for each
22 permanent fund and investment pool. The reports shall be
23 published on the web site of the council and the sunshine
24 portal and shall be open for inspection to the public and the
25 press in the investment office."

1 SECTION 9. Section 7-27-5.15 NMSA 1978 (being Laws
2 1990, Chapter 126, Section 5, as amended) is amended to read:

3 "7-27-5.15. NEW MEXICO PRIVATE EQUITY FUNDS AND
4 BUSINESS INVESTMENTS.--

5 A. No more than nine percent of the market value
6 of the severance tax permanent fund may be invested in
7 New Mexico private equity funds or New Mexico businesses
8 under this section.

9 B. In making investments pursuant to Subsection A
10 of this section, the council shall make investments in
11 New Mexico private equity funds or New Mexico businesses
12 whose investments or enterprises enhance the economic
13 development objectives of the state.

14 C. The state investment officer shall make
15 investments pursuant to Subsection A of this section only
16 upon approval of the council and within guidelines and
17 policies established by the council.

18 D. As used in this section:

19 (1) "New Mexico business" means, in the case
20 of a corporation or limited liability company, a business
21 with its principal office and a majority of its full-time
22 employees located in New Mexico or, in the case of a limited
23 partnership, a business with its principal place of business
24 and eighty percent of its assets located in New Mexico; and

25 (2) "New Mexico private equity fund" means a

1 limited partnership, limited liability company or corporation
2 organized and operating in the United States and maintaining
3 an office staffed by a full-time investment officer in
4 New Mexico that:

5 (a) has as its primary business
6 activity the investment of funds in return for equity in or
7 debt of businesses for the purpose of providing capital for
8 start-up, expansion, product or market development,
9 recapitalization or similar business purposes;

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

12 (c) has at least one full-time manager
13 with at least three years of professional experience in
14 assessing the growth prospects of businesses or evaluating
15 business plans and who has established permanent residency in
16 the state;

17 (d) is committed to investing or helps
18 secure investing by others, in an amount at least equal to
19 the total investment made by the state investment officer in
20 that fund pursuant to this section, in businesses with a
21 principal place of business in the state and that hold
22 promise for attracting additional capital from individual or
23 institutional investors nationwide for businesses in the
24 state; and

25 (e) accepts investments only from

1 accredited investors as that term is defined in Section 2 of
2 the federal Securities Act of 1933, as amended (15 USCA
3 Section 77(b)), and rules and regulations promulgated
4 pursuant to that section, or federally recognized Indian
5 tribes, nations and pueblos with at least five million
6 dollars (\$5,000,000) in overall investment assets.

7 E. The state investment officer is authorized to
8 make investments in New Mexico businesses to create new job
9 opportunities and to support new, emerging or expanding
10 businesses in a manner consistent with the constitution of
11 New Mexico if:

12 (1) the investments are made:

13 (a) in conjunction with cooperative
14 investment agreements with parties that have demonstrated
15 abilities and relationships in making investments in new,
16 emerging or expanding businesses;

17 (b) in a New Mexico aerospace business
18 that has received an award from the United States government
19 or one of its agencies or instrumentalities: 1) in an
20 amount, not less than one hundred million dollars
21 (\$100,000,000), that is equal to at least ten times the
22 investment from the severance tax permanent fund; and 2) for
23 the purpose of stimulating commercial enterprises; or

24 (c) in a New Mexico business that:

25 1) is established to perform technology transfer, research

1 and development, research commercialization, manufacturing,
2 training, marketing or public relations in any field of
3 science or technology, including but not limited to energy,
4 security, defense, aerospace, automotives, electronics,
5 telecommunications, computer and information science,
6 environmental science, biomedical science, life science,
7 physical science, materials science or nanoscience, using
8 research developed in whole or in part by a state institution
9 of higher education or a prime contractor designated as a
10 national laboratory by an act of congress that is operating a
11 facility in the state, or an affiliated entity; and 2) has an
12 agreement to operate the business on state lands;

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

16 (3) the investments represent no more than
17 fifty-one percent of the total investment capital in a
18 business; provided, however, that nothing in this subsection
19 prohibits the ownership of more than fifty-one percent of the
20 total investment capital in a New Mexico business if the
21 additional ownership interest:

22 (a) is due to foreclosure or other
23 action by the state investment officer pursuant to agreements
24 with the business or other investors in that business;

25 (b) is necessary to protect the

1 investment; and

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

4 F. The state investment officer shall make a
5 commitment to the small business investment corporation
6 pursuant to the Small Business Investment Act to invest one
7 percent of the market value of the severance tax permanent
8 fund to create new job opportunities by providing capital for
9 land, buildings or infrastructure for facilities to support
10 new or expanding businesses and to otherwise make investments
11 to create new job opportunities to support new or expanding
12 businesses in a manner consistent with the constitution of
13 New Mexico. On July 1 of each year, the state investment
14 officer shall determine whether the invested capital in the
15 small business investment corporation is less than one
16 percent of the market value of the severance tax permanent
17 fund. If the invested capital in the small business
18 investment corporation equals less than one percent of the
19 market value of the severance tax permanent fund, further
20 commitments shall be made until the invested capital is equal
21 to one percent of the market value of the fund.

22 G. The state investment officer shall report
23 semiannually on the New Mexico private equity investments
24 made pursuant to this section. Annually, a report shall be
25 submitted to the legislature prior to the beginning of each

1 regular legislative session and a second report no later than
2 October 1 each year to the legislative finance committee, the
3 revenue stabilization and tax policy committee and any other
4 appropriate interim committee. Each report shall provide the
5 amounts invested in each New Mexico private equity fund, as
6 well as information about the objectives of the funds, the
7 companies in which each fund is invested and how each
8 investment enhances the economic development objectives of
9 the state. Each report shall provide the amounts invested in
10 each New Mexico business."

11 SECTION 10. Section 7-27-5.26 NMSA 1978 (being Laws
12 2000 (2nd S.S.), Chapter 6, Section 2, as amended) is amended
13 to read:

14 "7-27-5.26. INVESTMENT IN FILMS TO BE PRODUCED IN
15 NEW MEXICO.--

16 A. No more than six percent of the market value of
17 the severance tax permanent fund may be invested in
18 New Mexico film private equity funds or a New Mexico film
19 project under this section.

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

25 C. The state investment officer shall make

1 investments pursuant to this section only upon approval of
2 the council after a review by the New Mexico film division of
3 the economic development department. The state investment
4 officer may make debt or equity investments pursuant to this
5 section only in New Mexico film projects or New Mexico film
6 private equity funds that invest only in film projects that:

7 (1) are filmed wholly or substantially in
8 New Mexico;

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

12 (3) have agreed that, while filming in
13 New Mexico, a majority of the production crew will be
14 New Mexico residents;

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

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

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

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

4 (c) by providing a full, unconditional
5 and irrevocable letter of credit from a United States
6 incorporated bank with a credit rating of not less than A by
7 a national rating agency; or

8 (d) from a substantial and solvent
9 entity as determined by the council in accordance with its
10 standards and practices; or

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

15 D. The state investment officer may loan at a
16 market rate of interest, with respect to an eligible
17 New Mexico film project, up to eighty percent of an expected
18 and estimated film production tax credit available to a film
19 production company pursuant to the provisions of Section
20 7-2F-1 NMSA 1978; provided that the film production company
21 agrees to name the state investment officer as its agent for
22 the purpose of filing an application for the film production
23 tax credit to which the company is entitled if the company
24 does not apply for the film production tax credit. The
25 New Mexico film division of the economic development

1 department shall determine the estimated amount of a film
2 production tax credit. The council shall establish
3 guidelines for the state investment officer's initiation of a
4 loan and the terms of the loan.

5 E. As used in this section:

6 (1) "film project" means a single media or
7 multimedia program, including advertising messages, fixed on
8 film, videotape, computer disc, laser disc or other similar
9 delivery medium from which the program can be viewed or
10 reproduced and that is intended to be exhibited in theaters;
11 licensed for exhibition by individual television stations,
12 groups of stations, networks, cable television stations or
13 other means or licensed for the home viewing market; and

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

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

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

23 (c) accepts investments only from
24 accredited investors as that term is defined in Section 2 of
25 the federal Securities Act of 1933, as amended, and rules

1 promulgated pursuant to that section."

2 SECTION 11. REPEAL.--Section 6-8-20 NMSA 1978 (being
3 Laws 1987, Chapter 219, Section 3, as amended) is
4 repealed. _____

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