

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 229

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

RICHARD T. KNOWLES

AN ACT

RELATING TO THE INVESTMENT OF THE STATE PERMANENT FUNDS;
AMENDING SECTIONS 6-8-9 AND 7-27-5.1 NMSA 1978 (BEING LAWS
1957, CHAPTER 179, SECTION 9 AND LAWS 1983, CHAPTER 306,
SECTION 8, AS AMENDED).

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

Section 1. Section 6-8-9 NMSA 1978 (being Laws 1957,
Chapter 179, Section 9, as amended) is amended to read:

"6-8-9. SECURITIES AND INVESTMENT. --

A. Money made available from the land grant
permanent funds for investment for a period in excess of one
year may be invested in the following classes of securities
and investments:

(1) bonds, notes or other obligations of the
United States government, its agencies, government-sponsored

Underscored material = new
[bracketed material] = delete

1 enterprises, corporations or instrumentalities and that
2 portion of bonds, notes or other obligations guaranteed as to
3 principal and interest and issued by the United States
4 government, its agencies, government-sponsored enterprises,
5 corporations or instrumentalities or issued pursuant to acts
6 or programs authorized by the United States government;

7 (2) bonds, notes, debentures and other
8 obligations issued by the state of New Mexico or a
9 municipality or other political subdivision of the state that
10 are secured by an investment grade bond rating from a national
11 rating service, pledged revenue or other collateral or
12 insurance necessary to satisfy the standard of prudence set
13 forth in Section 6-8-10 NMSA 1978;

14 (3) bonds, notes, debentures, [~~equipment~~
15 ~~trust certificates~~] instruments, conditional sales agreements,
16 securities or other evidences of indebtedness of any
17 corporation, partnership or trust organized and operating
18 within the United States rated not less than Baa or BBB or the
19 equivalent by a national rating service;

20 (4) notes or obligations securing loans or
21 participation in loans to business concerns or other
22 organizations that are obligated to use the loan proceeds
23 within New Mexico, to the extent that loans are secured by
24 first mortgages on real estate located in New Mexico and are
25 further secured by an assignment of rentals, the payment of

. 121460. 1

Underscored material = new
[bracketed material] = delete

1 which is fully guaranteed by the United States in an amount
2 sufficient to pay all principal and interest on the mortgage;

3 (5) common and preferred stocks and
4 convertible issues of any corporation; provided that it has [a
5 ~~minimum net worth of twenty-five million dollars (\$25,000,000)~~
6 ~~and~~] securities listed on one or more national stock exchanges
7 or included in a nationally recognized list of stocks; and
8 provided further that the fund shall not own more than five
9 percent of the voting stock of any company;

10 (6) securities of non-United States
11 governmental, quasi-governmental, partnership, trust or
12 corporate entities, and these may be denominated in foreign
13 currencies; provided:

14 (a) aggregate non-United States
15 investments shall not exceed fifteen percent of the book value
16 of the land grant permanent funds;

17 (b) for non-United States stocks and
18 non-United States bonds and notes, issues permitted for
19 purchase shall be limited to those issues traded on a national
20 stock exchange or included in a nationally recognized list of
21 stocks or bonds;

22 (c) currency contracts may be used for
23 investing in non-United States securities only for the purpose
24 of hedging foreign currency risk and not for speculation;

25 (d) the investment management services

Underscored material = new
[bracketed material] = delete

1 of a trust company or national bank exercising trust powers or
2 of an investment counseling firm may be employed; and

3 (e) reasonable compensation for
4 investment management services and other administrative and
5 investment expenses related to these investments shall be paid
6 directly from the assets of the funds, subject to budgeting
7 and appropriation by the legislature; and

8 (7) stocks or shares of a diversified
9 investment company registered under the federal Investment
10 Company Act of 1940, as amended, and listed securities of
11 long-term unit investment trusts or individual, common or
12 collective trust funds of banks or trust companies that invest
13 primarily in equity securities authorized in Paragraphs (5)
14 and (6) of this subsection; provided that the investment
15 company has total assets under management of at least one
16 hundred million dollars (\$100,000,000); and provided further
17 that the council may allow reasonable administrative and
18 investment expenses to be paid directly from the assets
19 derived from these investments, subject to budgeting and
20 appropriation by the legislature.

21 B. Not more than sixty-five percent of the book
22 value of the land grant permanent funds shall be invested at
23 any given time in securities described in Paragraphs (5), (6)
24 and (7) of Subsection A of this section, and no more than ten
25 percent of the book value of the land grant permanent funds

. 121460. 1

Underscored material = new
[bracketed material] = delete

1 shall be invested at any given time in securities described in
2 Paragraph (3) of Subsection A of this section that are rated
3 Baa or BBB. Assets of the land grant permanent funds may be
4 combined for investment in common pooled funds to effectuate
5 efficient management.

6 C. Commissions paid for the purchase and sale of
7 any security shall not exceed brokerage rates prescribed and
8 approved by national stock exchanges or by industry practice."

9 Section 2. Section 7-27-5.1 NMSA 1978 (being Laws 1983,
10 Chapter 306, Section 8, as amended) is amended to read:

11 "7-27-5.1. MARKET RATE INVESTMENTS. --

12 A. Money made available from the severance tax
13 permanent fund for investment for a period in excess of one
14 year in market rate investments may be invested in the
15 following classes of securities and investments:

16 (1) bonds, notes or other obligations of the
17 United States government, its agencies, government-sponsored
18 enterprises, corporations or instrumentalities and that
19 portion of bonds, notes or other obligations guaranteed as to
20 principal and interest and issued by the United States
21 government, its agencies, government-sponsored enterprises,
22 corporations or instrumentalities or issued pursuant to acts
23 or programs authorized by the United States government;

24 (2) bonds, notes, debentures and other
25 obligations issued by the state of New Mexico or a

Underscored material = new
[bracketed material] = delete

1 municipality or other political subdivision of the state that
2 are secured by an investment grade bond rating from a national
3 rating service, pledged revenue or other collateral or
4 insurance necessary to satisfy the standard of prudence set
5 forth in Section 6-8-10 NMSA 1978;

6 (3) bonds, notes, debentures, [~~equipment~~
7 ~~trust certificates~~] instruments, conditional sales agreements,
8 securities or other evidences of indebtedness of any
9 corporation, partnership or trust organized and operating
10 within the United States rated not less than Baa or BBB or the
11 equivalent by a national rating service;

12 (4) notes or obligations securing loans or
13 participation in loans to business concerns or other
14 organizations that are obligated to use the loan proceeds
15 within New Mexico, to the extent that loans are secured by
16 first mortgages on real estate located in New Mexico and are
17 further secured by an assignment of rentals, the payment of
18 which is fully guaranteed by the United States in an amount
19 sufficient to pay all principal and interest on the mortgage;

20 (5) common and preferred stocks and
21 convertible issues of any corporation; provided that it has [a
22 ~~minimum net worth of twenty-five million dollars (\$25,000,000)~~
23 ~~and~~] securities listed on one or more national stock exchanges
24 or included in a nationally recognized list of stocks; and
25 provided further that the fund shall not own more than five

Underscored material = new
[bracketed material] = delete

1 percent of the voting stock of any company;

2 (6) securities of non-United States
3 governmental, quasi-governmental, partnership, trust or
4 corporate entities, and these may be denominated in foreign
5 currencies; provided:

6 (a) aggregate non-United States
7 investments shall not exceed fifteen percent of the book value
8 of the severance tax permanent fund;

9 (b) for non-United States stocks and
10 non-United States bonds and notes, issues permitted for
11 purchase shall be limited to those issues traded on a national
12 stock exchange or included in a nationally recognized list of
13 stocks or bonds;

14 (c) currency contracts may be used for
15 investing in non-United States securities only for the purpose
16 of hedging foreign currency risk and not for speculation;

17 (d) the investment management services
18 of a trust company or national bank exercising trust powers or
19 of an investment counseling firm may be employed; and

20 (e) reasonable compensation for
21 investment management services and other administrative and
22 investment expenses related to these investments shall be paid
23 directly from the assets of the fund, subject to budgeting and
24 appropriation by the legislature;

25 (7) stocks or shares of a diversified

Underscored material = new
[bracketed material] = delete

1 investment company registered under the federal Investment
2 Company Act of 1940, as amended, and listed securities of
3 long-term unit investment trusts or individual, common or
4 collective trust funds of banks or trust companies that invest
5 primarily in equity securities authorized in Paragraphs (5)
6 and (6) of this subsection; provided that the investment
7 company has total assets under management of at least one
8 hundred million dollars (\$100,000,000); and provided further
9 that the council may allow reasonable administrative and
10 investment expenses to be paid directly from the assets
11 derived from these investments, subject to budgeting and
12 appropriation by the legislature; and

13 (8) participation interests in New Mexico
14 real-property-related business loans. The actual amount
15 invested under this paragraph shall not exceed ten percent of
16 the severance tax permanent fund and shall be included in any
17 minimum amount of severance tax permanent fund investments
18 required to be placed in New Mexico certificates of deposit.
19 Investments authorized in this paragraph are subject to the
20 following:

21 (a) the state investment officer may
22 purchase from eligible institutions a participation interest
23 of up to eighty percent in any loan secured by a first
24 mortgage or a deed of trust on the real property located in
25 New Mexico of an eligible business entity, or its subsidiary,

Underscored material = new
[bracketed material] = delete

1 that is operating or shall use loan proceeds to commence
2 operations within New Mexico plus any other guarantees or
3 collateral that may be judged by the eligible institution or
4 the state investment officer to be prudent. To be eligible
5 for investment the following minimum requirements shall be
6 met: 1) the loan proceeds shall be used exclusively for the
7 purpose of expanding or establishing businesses in New Mexico,
8 including the refinancing of such businesses for expansion
9 purposes only. If a portion of the loan proceeds were used
10 for refinancing or repaying an existing loan and payment of
11 principal and interest to the state has not been made within
12 ninety days from the due date, unless extended pursuant to
13 agreement between the originating institution and the state
14 investment officer, the originating institution shall buy back
15 the state's participation interest in the loan and begin
16 foreclosure proceedings; 2) eligible business entities shall
17 not include public utilities or financial institutions or
18 shopping centers, apartment buildings or other such passive
19 investments; 3) the minimum loan amount shall be two hundred
20 fifty thousand dollars (\$250,000) and may be met by packaging
21 up to ten separate loans satisfying the requirements of this
22 paragraph. The maximum loan amount shall be two million
23 dollars (\$2,000,000); 4) the loan maturity shall be not less
24 than five years or more than thirty years; 5) the maximum
25 loan-to-value ratio shall be seventy-five percent and based on

. 121460. 1

Underscored material = new
[bracketed material] = delete

1 current appraisal of the real property by an appraiser who is
2 licensed or certified in New Mexico and approved by the state
3 investment officer, which shall be made not more than one
4 hundred eighty days from the loan origination date; 6) the
5 interest rate of the loan shall be fixed for five years and
6 shall be adjusted at every fifth anniversary of the note to
7 the rate specified in Item 7) of this subparagraph; 7) the
8 yield on the state's participation interest shall in no case
9 be less than the greater of the then-prevailing yield on
10 United States treasury securities of five-year maturity plus
11 two and one-half percent or the yield received by the lending
12 institution calculated exclusive of servicing fees; 8) if
13 payment of principal or interest has not been made within one
14 hundred eighty days from the due date, unless extended
15 pursuant to agreement between the originating institution and
16 the state investment officer, the originating institution
17 shall buy back the state's participation interest in the loan,
18 substitute another qualifying loan or begin foreclosure
19 proceedings; and 9) if foreclosure proceedings are commenced,
20 the state and the originating institution shall share in
21 proportion to their participation interest, as provided in
22 this subparagraph, in the legal and other foreclosure expenses
23 and in any loss incurred as a result of a foreclosure sale;

24 (b) a standardized participation
25 agreement, the form of which shall be approved by the attorney

Underscored material = new
[bracketed material] = delete

1 general's office, shall be executed between the investment
2 office and each eligible originating institution. The
3 participation agreement shall provide that the originating
4 institution shall not assign its interest in any loan covered
5 by the agreement without the prior written consent of the
6 state investment officer;

7 (c) a formal forward commitment program
8 may be instituted by the state investment officer with the
9 approval of the council;

10 (d) the council shall adopt
11 regulations: 1) defining passive investments; 2) establishing
12 underwriting guidelines; 3) ensuring diversification across a
13 variety of types of collateral, types of businesses and
14 regions of the state; and 4) providing for the review by the
15 state investment officer of servicing and other fees that may
16 be charged by the eligible institution;

17 (e) eligible institutions include
18 banks, savings and loan associations and credit unions
19 operating in the state; and

20 (f) real property is defined as land
21 and attached buildings, but excludes all interests that may be
22 secured by a security interest under Article 9 of the Uniform
23 Commercial Code, and mineral resource values.

24 B. Not more than sixty-five percent of the book
25 value of the severance tax permanent fund shall be invested at

. 121460. 1

Underscored material = new
[bracketed material] = delete

1 any given time in securities described in Paragraphs (5), (6)
2 and (7) of Subsection A of this section, and no more than ten
3 percent of the book value of the severance tax permanent fund
4 shall be invested at any given time in securities described in
5 Paragraph (3) of Subsection A of this section that are rated
6 Baa or BBB. Assets of the severance tax permanent fund may be
7 combined for investment in common pooled funds to effectuate
8 efficient management.

9 C. Commissions paid for the purchase and sale of
10 any security shall not exceed brokerage rates prescribed and
11 approved by national stock exchanges or by industry practice."

1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998
3
4
5

6 February 5, 1998
7

8 Mr. Speaker:
9

10 Your APPROPRIATIONS AND FINANCE COMMITTEE, to
11 whom has been referred
12

13 HOUSE BILL 229
14

15 has had it under consideration and reports same with
16 recommendation that it DO PASS.

17 Respectfully submitted,
18

19
20
21 _____
22 Max Coll, Chairman
23
24
25

1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998

3 Page 14

4 Adopted _____ Not Adopted _____

5
6 (Chief Clerk)

(Chief Clerk)

7
8 Date _____

9
10 The roll call vote was 16 For 0 Against

11 Yes: 16

12 Excused: Garcia, Wallace

13 Absent: None

14
15 G:\BILLTEXT\BILLW_98\H0229

16
17
18
19
20
21
22
23
24
25
Underscored material = new
[bracketed material] = delete

FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

Page 15

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

February 12, 1998

Mr. President:

Your FINANCE COMMITTEE, to whom has been referred

HOUSE BILL 229

has had it under consideration and reports same with
recommendation that it DO PASS.

Respectfully submitted,

Ben D. Altamirano, Chairman

. 121460. 1

Underscored material = new
[bracketed material] = delete

FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Adopted _____ Not

Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

No: None

Excused: Aragon, Carraro, Ingle, Lyons, McKibben

Absent: None

H0229FC1

Underscored material = new
[bracketed material] = delete