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BILL

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

INTRODUCED BY

DISCUSSION DRAFT

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.

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. "secretary" means the secretary of finance and
administration;~~

~~B. "department" means the department of finance and~~

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1 administration;

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

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

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

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

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

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

24 F. "severance tax permanent fund" means the fund
25 established pursuant to the provisions of Article 8, Section 10

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1 of the constitution of New Mexico;

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

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

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

10 "6-8-3. COUNCIL TERMS AND QUALIFICATIONS.--

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

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

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

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

12 C. Amounts [~~budgeted or appropriated~~] allocated
13 from the land grant permanent funds and the severance tax
14 permanent fund for the costs of administering and investing
15 those funds shall be in addition to the amounts distributed to
16 the beneficiaries of the land grant permanent funds and to the
17 general fund from the severance tax permanent fund as provided
18 by law [~~provided that amounts budgeted or appropriated from the~~
19 ~~land grant permanent funds shall be made from earnings on~~
20 ~~investments of the funds before distribution to the income~~
21 ~~funds during the period prior to the date the United States~~
22 ~~congress consents to the provisions of Constitutional Amendment~~
23 ~~1 approved at the 1996 general election~~].

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

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

3 "6-8-6. TRANSFER OF INVESTMENT POWERS.--

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

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

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

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

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1 MANAGERS.--

2 A. Subject to the limitations, conditions and
3 restrictions contained in policymaking regulations or
4 resolutions adopted by the council, the council may make
5 purchases, sales, exchanges, investments and reinvestments of
6 the assets of all funds in accordance with the Uniform Prudent
7 Investor Act. The state investment officer and the council are
8 trustees of all funds under their control and shall see that
9 money invested is at all times handled in the best interests of
10 the state. The council may delegate administrative and
11 investment-related functions to the state investment officer.
12 Nothing in this section shall limit the council's authority to
13 delegate investment and management duties pursuant to the
14 provisions of the Uniform Prudent Investor Act.

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

22 C. The council shall meet at least [~~once each~~
23 ~~month~~] eleven times per year, and as often as exigencies may
24 demand, to consult with the state investment officer concerning
25 the work of the investment office. The council shall have

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1 access to all files and records of the investment office and
2 shall require the state investment officer to report on and
3 provide information necessary to the performance of council
4 functions. The council may hire [~~one or more~~] investment
5 management, advisory or consulting firms to advise the council
6 with respect to the council's [~~overall~~] investment [~~plan~~]
7 decisions for the investment of [~~all~~] funds managed by the
8 investment office and pay reasonable compensation for such
9 management, advisory or consulting
10 services from the assets of the applicable funds, subject to
11 budgeting and appropriation by the legislature. The terms of
12 any such investment management, advisory or consulting services
13 contract shall incorporate the statutory requirements for
14 investment of funds under the council's jurisdiction. Prior to
15 being hired, a prospective investment management, advisory or
16 consulting services firm shall submit to the council a
17 disclosure detailing all campaign contributions made to the
18 governor, state treasurer or any member of the council, or to a
19 political committee that is intended to aid or promote the
20 nomination or election of any candidate to a state office if
21 the committee is:
22 (1) established by any of the foregoing
23 persons or their agents;
24 (2) established in consultation with or at the
25 request of any of the foregoing persons or their agents; or

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1 (3) controlled by one of the foregoing persons
2 or their agents.

3 D. The council shall provide an opportunity for
4 public comment at meetings of the council. Advance notice of
5 meetings shall be published on the council's web site [~~and in a~~
6 ~~newspaper of general circulation~~] at least ten days in advance
7 of the meeting.

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

22 (1) established by any of the foregoing
23 persons or their agents;

24 (2) established in consultation with or at the
25 request of any of the foregoing persons or their agents; or

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1 (3) controlled by one of the foregoing persons
2 or their agents.

3 F. Fiduciaries of the permanent funds are:

4 (1) the council;

5 (2) the state investment officer and
6 investment office staff;

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

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

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

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

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

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1 pursued under the contract. If the attorney general or the
2 department advises the council that the proposed contingency
3 fee is not reasonable, the council may nevertheless approve the
4 contract and the contingency fee by a majority vote of its
5 members; [~~and~~]

6 (3) in the event that the council contracts
7 for legal services pursuant to this subsection, the legal
8 services contractor shall act at the direction of the council
9 and not the attorney general. The council may delegate to the
10 state investment officer or a committee of the council the
11 responsibility for executing the contract and overseeing the
12 provision of legal services; and

13 [~~(3)~~] (4) each prospective legal services
14 contractor seeking to represent the council on a contingent or
15 partly contingent fee basis shall file with the council the
16 disclosure required by Section 13-1-191.1 NMSA 1978 disclosing
17 all campaign contributions made to the governor, attorney
18 general, state treasurer or any member of the council, or to a
19 political committee that is intended to aid or promote the
20 nomination or election of any candidate to a state office if
21 the committee is:

22 (a) established by any of the foregoing
23 persons or their agents;

24 (b) established in consultation with or
25 at the request of any of the foregoing persons or their agents;

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1 or

2 (c) controlled by one of the foregoing
3 persons or their agents.

4 H. The council may select and contract for the
5 services of one or more custodian banks for all funds under the
6 council's management. For the purpose of this subsection,
7 "custodian bank" means a financial institution with the general
8 fiduciary duties to manage, control and collect the assets of
9 an investment fund, including receiving all deposits and paying
10 all disbursements as directed by staff, safekeeping of assets,
11 coordination of asset transfers, timely settlement of
12 securities transactions and accurate and timely reporting of
13 the assets by individual account and in total.

14 I. For funds available for investment for more than
15 one year, the council may contract with any state agency to
16 provide investment advisory or investment management services,
17 separately or through a pooled investment fund; provided that
18 the state agency enters into a joint powers agreement with the
19 council and that the state agency pays at least the direct cost
20 of such services. Notwithstanding any statutory provision
21 governing state agency investments, the council may invest
22 funds available from a state agency pursuant to a joint powers
23 agreement in any type of investment permitted for the land
24 grant permanent funds under the prudent investor rule. In
25 performing investment services for a state agency, the council

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1 and the state investment officer and investment office staff
2 are exempt from the New Mexico Uniform Securities Act. As used
3 in this subsection, "state agency" means any branch, agency,
4 department, board, instrumentality, institution or political
5 subdivision of the state, the New Mexico finance authority, the
6 New Mexico mortgage finance authority and any tax-exempt
7 private endowment entity whose sole beneficiary is a state
8 agency or whose beneficiaries are students attending a public
9 post-secondary educational institution in the state.

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

15 K. Council members, the state investment officer
16 and investment office staff and committee members appointed by
17 the council, jointly and severally, shall be indemnified by the
18 state from all claims, demands, suits, actions, damages,
19 judgments, costs, charges and expenses, including court costs
20 and attorney fees, against all claims, liability, losses or
21 damages arising from any decisions made or actions taken while
22 acting within the scope of duty as a council member, the state
23 investment officer, investment office staff or a committee
24 member appointed by the council and pursuant to law."

25 SECTION 7. Section 6-8-11 NMSA 1978 (being Laws 1957,

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1 Chapter 179, Section 11, as amended) is amended to read:

2 "6-8-11. CUSTODY OF SECURITIES.--Securities purchased or
3 held by the state investment officer or the [~~state investment~~]
4 council shall be in the custody of [~~the state treasurer who~~
5 ~~may, with the approval of the secretary, deposit with a bank or~~
6 ~~trust company the securities for safekeeping and servicing]~~ a
7 custodian bank contracted pursuant to the provisions of
8 Subsection H of Section 6-8-7 NMSA 1978."

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

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

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

16 "6-8-14. MONTHLY REPORTS.--No later than [~~ten~~] twenty
17 days after the [~~close~~] end of each month, the state investment
18 officer shall submit to [~~the secretary and~~] the [~~state~~
19 ~~investment~~] council a report of the operations of the
20 investment office during the past month. Each report shall
21 [~~give a complete statement of the state investment portfolio as~~
22 ~~of the time of the report and, in addition, shall include a~~
23 ~~detailed summary of the month's investment, reinvestment,~~
24 ~~purchase, sale and exchange transactions, setting forth the~~
25 ~~investments bought, sold or exchanged, the dates thereof, the~~

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1 ~~prices paid or obtained, the names of the dealers involved,~~
2 ~~fees paid for each transaction, disclosure of contractor~~
3 ~~arrangements and a statement of the funds or accounts referred~~
4 ~~to herein. The reports shall also be circulated to a mailing~~
5 ~~list of investment bankers and brokers recommended by the~~
6 ~~council]~~ include a schedule of cumulative fiscal year actual
7 and budgeted expenditures and a monthly summary of
8 contributions, distributions, income and net gains or losses
9 for each permanent fund and investment pool. The reports shall
10 be published on the web [~~sites~~] site of the council [~~the~~
11 ~~legislature and the department of finance and administration]~~
12 and shall be open for inspection to the public and the press in
13 the [~~office of the state~~] investment [~~officer~~] office."

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

16 "7-27-5.15. NEW MEXICO PRIVATE EQUITY FUNDS AND BUSINESS
17 INVESTMENTS.--

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

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

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1 objectives of the state.

2 C. The state investment officer shall make
3 investments pursuant to Subsection A of this section only upon
4 approval of the council [~~upon review of the recommendation of~~
5 ~~the private equity investment advisory committee~~] and within
6 guidelines and policies established by the council.

7 D. As used in this section:

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

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

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

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

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1 (c) has at least one full-time manager
2 with at least three years of professional experience in
3 assessing the growth prospects of businesses or evaluating
4 business plans and who has established permanent residency in
5 the state;

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

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

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

25 (1) the investments are made:

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1 (a) in conjunction with cooperative
2 investment agreements with parties that have demonstrated
3 abilities and relationships in making investments in new,
4 emerging or expanding businesses;

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

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

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

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

10 (a) is due to foreclosure or other
11 action by the state investment officer pursuant to agreements
12 with the business or other investors in that business;

13 (b) is necessary to protect the
14 investment; and

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

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

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1 Mexico. On July 1 of each year, the state investment officer
2 shall determine whether the invested capital in the small
3 business investment corporation is less than one percent of the
4 market value of the severance tax permanent fund. If the
5 invested capital in the small business investment corporation
6 equals less than one percent of the market value of the
7 severance tax permanent fund, further commitments shall be made
8 until the invested capital is equal to one percent of the
9 market value of the fund.

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

24 SECTION 11. Section 7-27-5.26 NMSA 1978 (being Laws 2000
25 (2nd S.S.), Chapter 6, Section 2, as amended) is amended to

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1 read:

2 "7-27-5.26. INVESTMENT IN FILMS TO BE PRODUCED IN NEW
3 MEXICO.--

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

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

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

22 (1) are filmed wholly or substantially in New
23 Mexico;

24 (2) have shown to the satisfaction of the New
25 Mexico film division that a distribution contract is in place

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1 with a reputable distribution company;

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

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

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

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

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

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

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

24 (6) if not guaranteed pursuant to Paragraph
25 (5) of this subsection, have obtained no less than one-third of

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1 the estimated total production costs from other sources as
2 approved by the state investment officer.

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

17 E. As used in this section:

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

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underscoring material = new
~~[bracketed material] = delete~~

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

(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.