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SENATE BILL 1142

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Shannon Robinson

AN ACT

RELATING TO STATE FINANCE; ALLOWING DIRECT INVESTMENT OF THE SEVERANCE TAX PERMANENT FUND IN NEW MEXICO OWNED AND OPERATED FINE ART AND FINE MUSICAL INSTRUMENT PRIVATE EQUITY FUNDS; PROVIDING AND QUALIFYING LIMITATIONS.

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

Section 1. A new section of the Severance Tax Bonding Act is enacted to read:

"[NEW MATERIAL] INVESTMENT IN FINE ART AND FINE MUSICAL INSTRUMENT PRIVATE EQUITY FUNDS OWNED AND OPERATED IN NEW MEXICO.--

A. No more than three percent of the market value of the severance tax permanent fund may be invested in New Mexico fine art and fine musical instrument private equity funds.

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1 B. Not more than sixty million dollars
2 (\$60,000,000) of the amount authorized for investment pursuant
3 to Subsection A of this section shall be invested in one or
4 more fine art private equity funds. Not more than forty
5 millions dollars (\$40,000,000) of the amount authorized for
6 investment pursuant to Subsection A of this section shall be
7 invested in one or more fine musical instrument private equity
8 funds.

9 C. The state investment officer shall make
10 investments pursuant to this section only upon approval of the
11 state investment council after a review by the private equity
12 investment advisory committee. The state investment officer
13 may make investments pursuant to this section only in fine art
14 or fine musical instrument private equity funds that:

15 (1) are managed by reputable investment
16 companies with sufficient expertise in fine art or fine musical
17 instruments; and

18 (2) meet the following conditions:

19 (a) representations and warranties made
20 in the funds' private equity offering memoranda, subscription
21 agreements and any other offering documents have been approved
22 by the state investment council;

23 (b) the fund managers have provided to
24 the state investment council audited statements on a quarterly
25 basis reflecting the activities of the funds;

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1 (c) all bank accounts of the fund
2 managers, whether used for operations or asset acquisition,
3 reside in banking institutions operating in New Mexico;

4 (d) the fine art is placed with the
5 museum of New Mexico or in a traveling exhibit within the state
6 of New Mexico, and the fine musical instruments are placed at
7 the academy of the arts at the university of New Mexico, at New
8 Mexico state university, with the New Mexico symphony or at the
9 Santa Fe opera; and

10 (e) the fund managers fully insure all
11 acquisitions for all circumstances of use, show or loan,
12 including against theft or any damage for any cause.

13 D. As used in this section:

14 (1) "New Mexico fine art private equity fund"
15 means any limited partnership, limited liability company or
16 corporation organized and operating in New Mexico that:

17 (a) has as its primary business activity
18 the use of funds to acquire fine art, which is defined as art
19 that has demonstrated that it has: 1) a secondary market; 2)
20 either been sold at auction or been produced by an artist whose
21 other work has sold at auction; and 3) a value not less than
22 fifty thousand dollars (\$50,000) or more than five million
23 dollars (\$5,000,000);

24 (b) will hold the fine art acquisitions
25 for sale opportunistically, not later than ten years from the

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1 date of acquisition, with the objective of capital
2 appreciation; and

3 (c) accepts investments only from
4 accredited investors as that term is defined in Section 2 of
5 the federal Securities Act of 1933, as amended, and rules
6 adopted pursuant to that act; and

7 (2) "New Mexico fine musical instrument
8 private equity fund" means any limited partnership, limited
9 liability company or corporation organized and operating in New
10 Mexico that:

11 (a) has as its primary business activity
12 the use of funds to acquire fine musical instruments, which are
13 defined as musical instruments that: 1) are stringed,
14 unfretted instruments; 2) were made in the seventeenth,
15 eighteenth or nineteenth century in Italy, France, Germany or
16 England; 3) have a maker whose instruments have sold at
17 auction; 4) have demonstrated that they have a secondary
18 market; and 5) have a value not less than one hundred thousand
19 dollars (\$100,000) or more than eight million dollars
20 (\$8,000,000);

21 (b) will hold these acquisitions for
22 sale opportunistically, not later than ten years from the date
23 of acquisition, with the objective of capital appreciation; and

24 (c) accepts investments only from
25 accredited investors as that term is defined in Section 2 of

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1 the federal Securities Act of 1933, as amended, and rules
2 adopted pursuant to that section."

3 Section 2. Section 7-27-5 NMSA 1978 (being Laws 1983,
4 Chapter 306, Section 7, as amended) is amended to read:

5 "7-27-5. INVESTMENT OF SEVERANCE TAX PERMANENT FUND.--The
6 severance tax permanent fund shall be invested in separate
7 differential rate and market rate investment classes.

8 "Differential rate investments" are permitted in Sections
9 7-27-5.3 through 7-27-5.5, 7-27-5.13 through 7-27-5.17,
10 7-27-5.22 and 7-27-5.24 through 7-27-5.26 NMSA 1978 and the
11 investments permitted for fine art and fine musical instruments
12 provided in this 2007 act are intended to stimulate the economy
13 of New Mexico and to provide income to the severance tax
14 permanent fund. "Market rate investments" are investments that
15 are not differential rate investments and are intended to
16 provide income to the severance tax permanent fund. All market
17 rate investments and differential rate investments shall be
18 invested in accordance with the Uniform Prudent Investor Act
19 and shall be accounted for in accordance with generally
20 accepted accounting principles."