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HOUSE BILL 184

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

Luciano "Lucky" Varela

FOR THE INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE AND
THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO PUBLIC FUNDS; CLARIFYING THE PROVISION REGARDING
INVESTMENTS OF PUBLIC FUNDS OF LOCAL GOVERNING BODIES AND OTHER
ELIGIBLE GOVERNING BODIES; EXPANDING PARTICIPATION OF
PARTICIPATING GOVERNMENTS IN CERTAIN INVESTMENT FUNDS; AMENDING
SECTIONS OF THE NMSA 1978; MAKING APPROPRIATIONS; DECLARING AN
EMERGENCY.

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

Section 1. Section 6-10-1.1 NMSA 1978 (being Laws 1987,
Chapter 79, Section 3, as amended) is amended to read:

"6-10-1.1. DEFINITIONS.--As used in Chapter 6, Article 10
NMSA 1978:

~~[A. "deposit" includes share, share certificate and
share draft;~~

~~B.]~~ A. "department" means the department of finance

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1 and administration; [~~and~~]

2 B. "deposit" includes share, share certificate and
3 share draft;

4 C. "eligible governing body" means a local
5 governing body, the governing authority of a tribe or any other
6 governmental or quasi-governmental body created or authorized
7 to be created pursuant to New Mexico statutes;

8 D. "finance officer" means the chief financial
9 officer of an eligible governing body or a participating
10 government;

11 E. "local governing body" means a political
12 subdivision of the state, including a school district or a
13 post-secondary educational institution;

14 F. "participating government" means an eligible
15 governing body or the state treasurer on behalf of the general
16 fund that has invested money in the participating government
17 investment fund;

18 [~~G.~~] G. "secretary" means the secretary of finance
19 and administration; and

20 H. "tribe" means a federally recognized Indian
21 nation, tribe or pueblo or a subdivision or agency of a
22 federally recognized Indian nation, tribe or pueblo, located
23 wholly or partially in New Mexico."

24 Section 2. Section 6-10-10 NMSA 1978 (being Laws 1933,
25 Chapter 175, Section 4, as amended) is amended to read:

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1 "6-10-10. DEPOSIT AND INVESTMENT OF FUNDS.--

2 A. Upon the certification or designation of a bank,
3 savings and loan association or credit union whose deposits are
4 insured by an agency of the United States to receive public
5 money on deposit, the state treasurer and county or municipal
6 treasurers who have on hand any public money by virtue of their
7 offices shall make deposit of that money in banks and savings
8 and loan associations and may make deposit of that money in
9 credit unions whose deposits are insured by an agency of the
10 United States, designated by the authority authorized by law to
11 so designate to receive the deposits of all money thereafter
12 received or collected by the treasurers.

13 B. County or municipal treasurers may deposit money
14 in one or more accounts with any such bank, savings and loan
15 association or credit union located in their respective
16 counties, subject to limitation on credit union accounts.

17 C. The state treasurer may deposit money in one or
18 more accounts with any such bank, savings and loan association
19 or credit union, subject to the limitation on credit union
20 accounts.

21 D. Duplicate receipts or deposit slips shall be
22 taken for each deposit made pursuant to Subsection A, B or C of
23 this section. When deposits are made by the state treasurer,
24 one copy of the receipt or deposit slip shall be retained by
25 the state treasurer and the other copy shall be filed monthly

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1 on the first day of each month with the financial control
2 division of the department of finance and administration. When
3 deposits are made by the treasurer or any other authorized
4 person making the deposits for a board of finance of a public
5 or educational institution, one copy of the receipt or deposit
6 slip shall be retained by the treasurer or authorized person
7 making the deposit and the other copy shall be filed monthly on
8 the first day of each month with that board of finance. When
9 deposits are made by a county or municipal treasurer, one of
10 the duplicate receipts or deposit slips shall be retained by
11 the treasurer making the deposit and the other copy shall be
12 filed monthly on the first day of each month with the secretary
13 of the board of finance of the county or municipality for which
14 that treasurer is acting.

15 E. "Deposit", as used in this section, means either
16 investment or deposit and includes share, share certificate and
17 share draft.

18 F. County or municipal treasurers, with the advice
19 and consent of their respective boards of finance charged with
20 the supervision and control of the respective funds, may invest
21 all sinking funds or money remaining unexpended from the
22 proceeds of any issue of bonds or other negotiable securities
23 of any county, municipality or school district that is
24 entrusted to their care and custody and all money not
25 immediately necessary for the public uses of the counties,

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1 municipalities or school districts not invested or deposited in
2 banks, savings and loan associations or credit unions in:

3 (1) bonds or negotiable securities of the
4 United States, the state or a county, municipality or school
5 district that has a taxable valuation of real property for the
6 last preceding year of at least one million dollars
7 (\$1,000,000) and that has not defaulted in the payment of any
8 interest or sinking fund obligation or failed to meet any bonds
9 at maturity at any time within five years last preceding; or

10 (2) securities that are issued by the United
11 States government or by its agencies or instrumentalities and
12 that are either direct obligations of the United States, the
13 federal home loan mortgage association, the federal national
14 mortgage association, the federal farm credit bank, federal
15 home loan banks or the student loan marketing association or
16 that are backed by the full faith and credit of the United
17 States government.

18 G. The treasurer of a class A county or the
19 treasurer of a municipality having a population of more than
20 sixty-five thousand according to the most recent federal
21 decennial census and located within a class A county, with the
22 advice and consent of the boards of finance charged with the
23 supervision and control of the funds, may invest all sinking
24 funds or money remaining unexpended from the proceeds of any
25 issue of bonds or other negotiable securities of the county or

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1 municipality that is entrusted to the treasurer's care and
2 custody and all money not immediately necessary for the public
3 uses of the county or municipality not invested or deposited in
4 banks, savings and loan associations or credit unions in:

5 (1) shares of a diversified investment company
6 registered pursuant to the federal Investment Company Act of
7 1940 that invests in fixed-income securities or debt
8 instruments that are listed in a nationally recognized, broad-
9 market, fixed-income-securities market index; provided that the
10 investment company or manager has total assets under management
11 of at least one hundred million dollars (\$100,000,000) and
12 provided that the board of finance of the county or
13 municipality may allow reasonable administrative and investment
14 expenses to be paid directly from the income or assets of these
15 investments;

16 (2) individual, common or collective trust
17 funds of banks or trust companies that invest in fixed-income
18 securities or debt instruments that are listed in a nationally
19 recognized, broad-market, fixed-income-securities market index;
20 provided that the investment company or manager has total
21 assets under management of at least one hundred million dollars
22 (\$100,000,000) and provided that the board of finance of the
23 county or municipality may allow reasonable administrative and
24 investment expenses to be paid directly from the income or
25 assets of these investments; or

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1 (3) shares of pooled investment funds managed
2 by the state investment officer, as provided in Subsection [G]
3 E of Section 6-8-7 NMSA 1978; provided that the board of
4 finance of the county or municipality may allow reasonable
5 administrative and investment expenses to be paid directly from
6 the income or assets of these investments.

7 H. A local public body, with the advice and consent
8 of the body charged with the supervision and control of the
9 local public body's respective funds, may invest all sinking
10 funds or money remaining unexpended from the proceeds of any
11 issue of bonds or other negotiable securities of the investor
12 that is entrusted to the local public body's care and custody
13 and all money not immediately necessary for the public uses of
14 the investor and not otherwise invested or deposited in banks,
15 savings and loan associations or credit unions in contracts
16 with banks, savings and loan associations or credit unions for
17 the present purchase and resale at a specified time in the
18 future of specific securities at specified prices at a price
19 differential representing the interest income to be earned by
20 the investor. The contract shall be fully secured by
21 obligations of the United States or other securities backed by
22 the United States having a market value of at least one hundred
23 two percent of the contract. The collateral required for
24 investment in the contracts provided for in this subsection
25 shall be shown on the books of the financial institution as

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1 being the property of the investor and the designation shall be
2 contemporaneous with the investment. As used in this
3 subsection, "local public body" includes all political
4 subdivisions of the state and agencies, instrumentalities and
5 institutions thereof; provided that home rule municipalities
6 that prior to July 1, 1994 had enacted ordinances authorizing
7 the investment of repurchase agreements may continue investment
8 in repurchase agreements pursuant to those ordinances.

9 I. The state treasurer, with the advice and consent
10 of the state board of finance, may invest money held in demand
11 deposits and not immediately needed for the operation of state
12 government and money held in the [~~short-term~~] participating
13 government investment fund, except as provided in Section
14 6-10-10.1 NMSA 1978. The investments may be made in securities
15 that are issued by the United States government or by its
16 departments or agencies and are either direct obligations of
17 the United States or are backed by the full faith and credit of
18 the United States government or agencies sponsored by the
19 United States government.

20 J. The state treasurer, with the advice and consent
21 of the state board of finance, may also invest in contracts for
22 the present purchase and resale at a specified time in the
23 future, not to exceed one year or, in the case of bond
24 proceeds, not to exceed three years, of specific securities at
25 specified prices at a price differential representing the

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1 interest income to be earned by the state. Such contract shall
2 not be invested in unless the contract is fully secured by
3 obligations of the United States or its agencies or
4 instrumentalities or by other securities backed by the United
5 States or its agencies or instrumentalities having a market
6 value of at least one hundred two percent of the amount of the
7 contract. The securities required as collateral under this
8 subsection shall be delivered to a third-party custodian bank
9 pursuant to a contract with the state and the counterparty or
10 to the fiscal agent of New Mexico or its designee. Delivery
11 shall be made simultaneously with the transfer of funds or as
12 soon as practicable, but no later than the same day that the
13 funds are transferred.

14 K. The state treasurer, with the advice and consent
15 of the state board of finance, may also invest in contracts for
16 the temporary exchange of state-owned securities for the use of
17 broker-dealers, banks or other recognized institutional
18 investors in securities, for periods not to exceed one year for
19 a specified fee rate. Such contract shall not be invested in
20 unless the contract is fully secured by exchange of an
21 irrevocable letter of credit running to the state, cash or
22 equivalent collateral of at least one hundred two percent of
23 the market value of the securities plus accrued interest
24 temporarily exchanged. The collateral required by this
25 subsection shall be delivered to the fiscal agent of New Mexico

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1 or its designee simultaneously with the transfer of funds or as
2 soon as practicable, but no later than the same day that the
3 state-owned securities are transferred.

4 L. Neither of the contracts in Subsection J or K of
5 this section shall be invested in unless the contracting bank,
6 brokerage firm or recognized institutional investor has a net
7 worth in excess of five hundred million dollars (\$500,000,000).

8 M. The state treasurer, with the advice and consent
9 of the state board of finance, may also invest in any of the
10 following investments in an amount not to exceed forty percent
11 of any fund that the state treasurer invests:

12 (1) commercial paper rated "prime" quality by
13 a national rating service, issued by corporations organized and
14 operating within the United States;

15 (2) medium-term notes and corporate notes with
16 a maturity not exceeding five years that are rated A or its
17 equivalent or better by a nationally recognized rating service
18 and that are issued by a corporation organized and operating in
19 the United States; or

20 (3) an asset-backed obligation with a maturity
21 not exceeding five years that is rated AAA or its equivalent by
22 a nationally recognized rating service.

23 N. The state treasurer, with the advice and consent
24 of the state board of finance, may also invest in:

25 (1) shares of an open-ended diversified

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1 investment company that:

2 (a) is registered with the United States
3 securities and exchange commission;

4 (b) complies with the diversification,
5 quality and maturity requirements of Rule 2a-7, or any
6 successor rule, of the United States securities and exchange
7 commission applicable to money market mutual funds; and

8 (c) assesses no fees pursuant to Rule
9 12b-1, or any successor rule, of the United States securities
10 and exchange commission, no sales load on the purchase of
11 shares and no contingent deferred sales charge or other similar
12 charges, however designated, provided that the state shall not,
13 at any time, own more than five percent of a money market
14 mutual fund's assets; [~~or~~]

15 (2) individual, common or collective trust
16 funds of banks or trust companies that invest in United States
17 fixed-income securities or debt instruments authorized pursuant
18 to Subsections I, J and M of this section, provided that the
19 investment manager has assets under management of at least one
20 billion dollars (\$1,000,000,000) and the investments made by
21 the state treasurer pursuant to this paragraph are less than
22 five percent of the assets of the individual, common or
23 collective trust fund; or

24 (3) the participating government investment
25 fund managed by the office of the state treasurer. Investments

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1 made pursuant to this paragraph shall be less than five percent
2 of the total assets of the participating government investment
3 fund.

4 0. Public funds to be invested in negotiable
5 securities or loans to financial institutions fully secured by
6 negotiable securities at current market value shall not be paid
7 out unless there is a contemporaneous transfer of the
8 securities at the earliest time industry practice permits, but
9 in all cases, settlement shall be on a same-day basis either by
10 physical delivery or, in the case of uncertificated securities,
11 by appropriate book entry on the books of the issuer, to the
12 purchaser or to a reputable safekeeping financial institution
13 acting as agent or trustee for the purchaser, which agent or
14 trustee shall furnish timely confirmation to the purchaser."

15 Section 3. Section 6-10-10.1 NMSA 1978 (being Laws 1988,
16 Chapter 61, Section 2, as amended) is amended to read:

17 "6-10-10.1. [~~SHORT-TERM~~] PARTICIPATING GOVERNMENT
18 INVESTMENT FUND CREATED--DISTRIBUTION OF EARNINGS--REPORT OF
19 INVESTMENTS.--

20 A. There is created in the state treasury the
21 [~~short-term~~] "participating government investment fund". The
22 fund shall consist of all deposits from [~~governmental entities~~
23 ~~and Indian tribes or pueblos~~] participating governments,
24 including revenues dedicated to repaying bonds, that are placed
25 in the custody of the state treasurer for [~~short-term~~]

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1 investment purposes pursuant to this section. The state
2 treasurer shall maintain [~~a~~] one or more separate [~~account~~]
3 accounts for each [~~governmental entity and Indian tribe or~~
4 ~~pueblo~~] participating government having deposits in the
5 participating government investment fund and may divide the
6 fund into two or more subfunds, as the state treasurer deems
7 appropriate, for short-term and medium-term investment
8 purposes, including one or more subfunds for bond proceeds
9 deposited by participating governments.

10 B. If [~~a local public~~] an eligible governing body
11 is unable to receive payment on public money at the rate of
12 interest as set forth in Section 6-10-36 NMSA 1978 from
13 financial institutions within the geographic boundaries of the
14 [~~governmental unit, then a local public~~] eligible governing
15 body, or if the eligible governing body is not bound by the
16 terms of Section 6-10-36 NMSA 1978, the finance [~~official~~]
17 officer having control of the money of that [~~local public~~]
18 eligible governing body [~~in that official's custody~~] not
19 required for current expenditure may, with the consent of the
20 [~~appropriate local~~] board of finance [~~if any~~] of the eligible
21 governing body if consent is required by the laws or rules of
22 the eligible governing body, remit some or all of [~~such~~] the
23 money to the state treasurer for deposit for the purpose of
24 [~~short-term~~] investment as allowed by this section.

25 C. Before [~~local~~] funds are invested or reinvested

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1 ~~[for the purpose of short-term investment]~~ pursuant to this
2 section, ~~[the local public body]~~ a finance ~~[official]~~ officer
3 shall notify and make ~~[such]~~ the funds available for investment
4 to banks, savings and loan associations and credit unions
5 located within the geographical boundaries of ~~[their respective~~
6 ~~governmental unit]~~ the participating government or the eligible
7 governing body, subject to the limitation on credit union
8 accounts. To be eligible for ~~[such]~~ deposit of the government
9 funds, the financial institution shall pay to the ~~[local~~
10 ~~public]~~ participating government or eligible governing body the
11 rate established by the state treasurer pursuant to a policy
12 adopted by the state board of finance for ~~[such short-term]~~ the
13 investments.

14 D. ~~[The local public body]~~ A finance ~~[official]~~
15 officer shall specify the length of time a deposit shall be in
16 the ~~[short-term]~~ participating government investment fund ~~[but~~
17 ~~in any event the deposit shall not be made for more than one~~
18 ~~hundred eighty-one days]~~. The state treasurer through the use
19 of the state fiscal agent shall separately track each ~~[such]~~
20 deposit and shall make ~~[such]~~ information regarding the deposit
21 available to the public upon written request.

22 E. The state treasurer shall invest the ~~[short-~~
23 ~~term]~~ participating government investment fund as provided ~~[for~~
24 ~~state funds under]~~ in Section 6-10-10 NMSA 1978 regarding the
25 investment of state funds in investments with a maturity at the

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1 time of purchase that does not exceed three [~~hundred ninety-~~
2 ~~seven days~~] years. The state treasurer may elect to have the
3 [~~short-term~~] participating government investment fund
4 consolidated for investment purposes with the state funds under
5 the control of the state treasurer; provided that accurate and
6 detailed accounting records are maintained for the account of
7 each participating [~~entity and Indian tribe or pueblo~~]
8 government and that a proportionate amount of interest earned
9 is credited to each of the separate [~~government~~] accounts of a
10 participating government. The fund shall be invested to
11 achieve its objective, which is to realize the maximum return
12 consistent with safe and prudent management.

13 F. At the end of each month, all net investment
14 income or losses from investment of the [~~short-term~~]
15 participating government investment fund shall be distributed
16 by the state treasurer to the [~~contributing entities and Indian~~
17 ~~tribes or pueblos~~] accounts of participating governments in
18 amounts directly proportionate to the respective amounts
19 deposited by them in the participating government investment
20 fund and the length of time the amounts in [~~the fund~~] each
21 account were invested.

22 G. The state treasurer shall charge participating
23 [~~entities, Indian tribes and pueblos~~] governments reasonable
24 audit, administrative and investment expenses [~~to be paid~~] and
25 shall deduct those expenses directly from [~~their~~] the net

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1 investment income for the investment and administrative
2 services provided pursuant to this ~~[section]~~ subsection. The
3 amount of the charges, the manner of the use by the state
4 treasurer and the nature of bond-related services to be offered
5 shall be established in rules adopted and promulgated by the
6 state treasurer subject to approval by the state board of
7 finance.

8 H. Subject to appropriation by the legislature,
9 amounts deducted from the accounts of participating governments
10 for charges permitted pursuant to this section shall be
11 expended by the state treasurer in fiscal year 2008 and in
12 subsequent fiscal years for the administration and management
13 of the participating government investment fund, services
14 provided to participating governments related to investment of
15 their money in that fund and other services authorized by this
16 section. Balances remaining at the end of a fiscal year from
17 the amounts deducted pursuant to this section shall revert to
18 the general fund. Balances in the state treasurer's operating
19 account resulting from deductions taken pursuant to this
20 section in excess of the amount required to provide
21 administration, management and related services required by
22 this subsection or other services authorized by this section
23 shall be offset by reductions in the charges made by the state
24 treasurer to the accounts of participating governments in
25 subsequent deductions from participating governments' accounts.

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1 ~~[G.]~~ I. Investments of the ~~[short-term]~~
2 participating government investment fund shall be made in such
3 a manner that the portion of the fund invested in short-term
4 investments maintains a "AA" or higher rating. Each fiscal
5 year and at such other times as directed by the state board of
6 finance, the state treasurer shall cause to have the short-term
7 investment portion of the participating government investment
8 fund rated by a nationally recognized statistical rating
9 organization. If the rating received by the short-term
10 investment portion of the fund is lower than "AA", the state
11 treasurer shall immediately submit a plan to the state board of
12 finance detailing the steps that will be taken to obtain a "AA"
13 or higher rating.

14 ~~[H. As used in this section, "local public body"~~
15 ~~means a political subdivision of the state, including school~~
16 ~~districts and post-secondary educational institutions.~~

17 ~~I. In addition to the deposit of funds of local~~
18 ~~public bodies, the state treasurer may also accept for deposit,~~
19 ~~deposit and account for, in the same manner as funds of local~~
20 ~~public bodies, funds of the following governmental entities if~~
21 ~~the governing authority of the entity approves by resolution~~
22 ~~the deposit of the funds for the short-term investment:~~

23 ~~(1) the agricultural commodity commission~~
24 ~~established under the Agricultural Commodity Commission Act;~~

25 ~~(2) the Albuquerque metropolitan arroyo flood~~

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1 ~~control authority established under the Arroyo Flood Control~~
2 ~~Act;~~

3 ~~(3) the business improvement district~~
4 ~~management committee established under the Business Improvement~~
5 ~~District Act;~~

6 ~~(4) the New Mexico community development~~
7 ~~council established under the New Mexico Community Assistance~~
8 ~~Act;~~

9 ~~(5) the governing authority of only special~~
10 ~~districts authorized under Chapter 73 NMSA 1978;~~

11 ~~(6) the board of trustees established under~~
12 ~~the Economic Advancement District Act;~~

13 ~~(7) the board of directors of a corporation or~~
14 ~~foundation established under the Educational Assistance Act;~~

15 ~~(8) a board of directors established under the~~
16 ~~Flood Control District Act;~~

17 ~~(9) the New Mexico hospital equipment loan~~
18 ~~council established under the Hospital Equipment Loan Act;~~

19 ~~(10) the authority established under the~~
20 ~~Industrial and Agricultural Finance Authority Act;~~

21 ~~(11) the authority established under the Las~~
22 ~~Gruces Arroyo Flood Control Act;~~

23 ~~(12) the authority established under the~~
24 ~~Mortgage Finance Authority Act;~~

25 ~~(13) the authority established under the~~

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1 ~~Municipal Mortgage Finance Act;~~

2 ~~(14) the authority established under the~~
3 ~~Public School Insurance Authority Act;~~

4 ~~(15) the authority established under the~~
5 ~~Southern Sandoval County Arroyo Flood Control Act;~~

6 ~~(16) a board of trustees established under the~~
7 ~~Special Hospital District Act;~~

8 ~~(17) the authority established under the~~
9 ~~New Mexico Finance Authority Act; and~~

10 ~~(18) the corporation established under the~~
11 ~~Small Business Investment Act.~~

12 ~~J. In addition to the deposit of funds of local~~
13 ~~public bodies, the state treasurer may also accept for deposit~~
14 ~~and deposit and account for, in the same manner as funds of~~
15 ~~local public bodies, funds of any Indian tribe or pueblo in the~~
16 ~~state if authorized to do so under a joint powers agreement~~
17 ~~executed by the state treasurer and the governing authority of~~
18 ~~the Indian tribe or pueblo under the provisions of the Joint~~
19 ~~Powers Agreements Act.]~~

20 J. The state treasurer may offer to provide to
21 participating governments services related to requirements of
22 the federal income tax laws applicable to the investment of
23 bond proceeds.

24 K. A tribe or quasi-governmental body created
25 pursuant to New Mexico statute may become a participating

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1 government only if the governing authority of the tribe or
2 quasi-governmental body has adopted a resolution authorizing
3 the tribe or quasi-governmental body to remit money to the
4 state treasurer for investment in the participating government
5 investment fund.

6 L. Deposits by the state treasurer on behalf of the
7 general fund shall not exceed five percent of the total amount
8 in the participating government investment fund at any time."

9 Section 4. EMERGENCY.--It is necessary for the public
10 peace, health and safety that this act take effect immediately.