

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILL 174

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

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

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underscoring material = new
[bracketed material] = delete

1 B. ~~"department" means the department of finance and~~
2 ~~administration;~~

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

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

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

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

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

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

25 F. "severance tax permanent fund" means the fund

1 established pursuant to the provisions of Article 8, Section 10
 2 of the constitution of New Mexico;

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

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

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

11 "6-8-3. COUNCIL TERMS AND QUALIFICATIONS.--

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

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

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

1 legislature 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 from the land
 13 grant permanent funds and the severance tax permanent fund for
 14 the costs of administering and investing those funds shall be
 15 in addition to the amounts distributed to the beneficiaries of
 16 the land grant permanent funds and to the general fund from the
 17 severance tax permanent fund as provided by law [~~provided that~~
 18 ~~amounts budgeted or appropriated from the land grant permanent~~
 19 ~~funds shall be made from earnings on investments of the funds~~
 20 ~~before distribution to the income funds during the period prior~~
 21 ~~to the date the United States congress consents to the~~
 22 ~~provisions of Constitutional Amendment 1 approved at the 1996~~
 23 ~~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 6-8-7 NMSA 1978 (being Laws 1957,
2 Chapter 179, Section 7, as amended) is amended to read:

3 "6-8-7. POWERS AND DUTIES OF THE STATE INVESTMENT COUNCIL
4 AND STATE INVESTMENT OFFICER--INVESTMENT POLICY--INVESTMENT
5 MANAGERS.--

6 A. Subject to the limitations, conditions and
7 restrictions contained in policymaking regulations or
8 resolutions adopted by the council, the council may make
9 purchases, sales, exchanges, investments and reinvestments of
10 the assets of all funds in accordance with the Uniform Prudent
11 Investor Act. The state investment officer and the council are
12 trustees of all funds under their control and shall see that
13 money invested is at all times handled in the best interests of
14 the state. The council may delegate administrative and
15 investment-related functions to the state investment officer.

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

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

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1 the work of the investment office. The council shall have
2 access to all files and records of the investment office and
3 shall require the state investment officer to report on and
4 provide information necessary to the performance of council
5 functions. The council may hire [~~one or more~~] investment
6 management or consulting firms to advise the council with
7 respect to the council's [~~overall~~] investment [~~plan~~] decisions
8 for the investment of [~~all~~] funds managed by the investment
9 office and pay reasonable compensation for such [~~advisory~~]
10 management or consulting services from the assets of the
11 applicable funds, subject to budgeting and appropriation by the
12 legislature. The terms of any such investment management or
13 consulting services contract shall incorporate the statutory
14 requirements for investment of funds under the council's
15 jurisdiction. Prior to being hired, a prospective investment
16 management, advisory or consulting services firm shall submit
17 to the council a disclosure detailing all campaign
18 contributions made within the last two years by the firm or the
19 principals of the firm to any member of the council, or to a
20 political committee or other entity that is intended to aid or
21 promote the nomination or election of any council member to a
22 political office.

23 D. The council shall provide an opportunity for
24 public comment at meetings of the council. Advance notice of
25 meetings shall be published on the council's web site and in a

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1 newspaper of general circulation at least ten days in advance
2 of the meeting.

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

17 F. Fiduciaries of the permanent funds are:

18 (1) the council;

19 (2) the state investment officer and
20 investment office staff;

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

25 (4) all persons exercising discretionary

1 authority over or control of funds under the management of the
2 council [~~are fiduciaries~~].

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

7 (1) amounts recovered by the legal services
8 contractor shall be deposited in the state investment council
9 suspense fund;

10 (2) the council shall submit each proposed
11 contract to the attorney general and the department for review
12 of the contingency fee. The attorney general's and the
13 department's review shall take into account the complexity of
14 the factual and legal issues presented by the claims to be
15 pursued under the contract. If the attorney general or the
16 department advises the council that the proposed contingency
17 fee is not reasonable, the council may nevertheless approve the
18 contract and the contingency fee by a majority vote of its
19 members; and

20 (3) each prospective legal services contractor
21 seeking to represent the council on a contingent or partly
22 contingent fee basis shall file with the council the disclosure
23 required by Section 13-1-191.1 NMSA 1978 disclosing all
24 campaign contributions made to the governor, attorney general,
25 state treasurer or any member of the council, or to a political

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1 committee that is intended to aid or promote the nomination or
2 election of any candidate to a state office if the committee
3 is:

4 (a) established by any of the foregoing
5 persons or their agents;

6 (b) established in consultation with or
7 at the request of any of the foregoing persons or their agents;
8 or

9 (c) controlled by one of the foregoing
10 persons or their agents.

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

21 I. For funds available for investment for more than
22 one year, the council may contract with any state agency to
23 provide investment advisory or investment management services,
24 separately or through a pooled investment fund; provided that
25 the state agency enters into a joint powers agreement with the

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1 council and that the state agency pays at least the direct cost
2 of such services. Notwithstanding any statutory provision
3 governing state agency investments, the council may invest
4 funds available from a state agency pursuant to a joint powers
5 agreement in any type of investment permitted for the land
6 grant permanent funds under the prudent investor rule. In
7 performing investment services for a state agency, the council
8 and the state investment officer and investment office staff
9 are exempt from the New Mexico Uniform Securities Act. As used
10 in this subsection, "state agency" means any branch, agency,
11 department, board, instrumentality, institution or political
12 subdivision of the state, the New Mexico finance authority, the
13 New Mexico mortgage finance authority and any tax-exempt
14 private endowment entity whose sole beneficiary is a state
15 agency or whose beneficiaries are students attending a public
16 educational institution in the state.

17 J. The state investment officer shall provide
18 quarterly performance reports to the legislative finance
19 committee. Annually, the state investment officer shall ratify
20 and provide written investment policies, including any
21 amendments, to the legislative finance committee.

22 K. Council members, the state investment officer
23 and investment office staff and committee members appointed by
24 the council, jointly and severally, shall be indemnified by the
25 state, out of the permanent funds, from all claims, demands,

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1 suits, actions, damages, judgments, costs, charges and
2 expenses, including court costs and attorney fees, against all
3 claims, liability, losses or damages arising from any decisions
4 made or actions taken while acting within the scope of duty and
5 pursuant to law as a council member, the state investment
6 officer, investment office staff or a committee member
7 appointed by the council. Following indemnification, if it is
8 shown that the indemnified person acted fraudulently or with
9 intentional malice, the state shall have the right to recover
10 from the indemnified person any amount expended under this
11 subsection."

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

14 "6-8-11. CUSTODY OF SECURITIES.--Securities purchased or
15 held by the state investment officer or the [~~state investment~~]
16 council shall be in the custody of [~~the state treasurer who~~
17 ~~may, with the approval of the secretary, deposit with a bank or~~
18 ~~trust company the securities for safekeeping and servicing]~~ a
19 custodian bank contracted pursuant to the provisions of
20 Subsection H of Section 6-8-7 NMSA 1978."

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

23 "6-8-13. RECORD OF INVESTMENTS.--The investment
24 [~~division~~] office shall keep accurate and complete records and
25 accounts concerning the state investment portfolio."

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

3 "6-8-14. MONTHLY REPORTS.--No later than [~~ten~~] twenty
4 days after the [~~close~~] end of each month, the state investment
5 officer shall submit to [~~the secretary and~~] the [~~state~~
6 ~~investment~~] council a report of the operations of the
7 investment office during the past month. Each report shall
8 [~~give a complete statement of the state investment portfolio as~~
9 ~~of the time of the report and, in addition, shall include a~~
10 ~~detailed summary of the month's investment, reinvestment,~~
11 ~~purchase, sale and exchange transactions, setting forth the~~
12 ~~investments bought, sold or exchanged, the dates thereof, the~~
13 ~~prices paid or obtained, the names of the dealers involved,~~
14 ~~fees paid for each transaction, disclosure of contractor~~
15 ~~arrangements and a statement of the funds or accounts referred~~
16 ~~to herein. The reports shall also be circulated to a mailing~~
17 ~~list of investment bankers and brokers recommended by the~~
18 ~~council~~] include a schedule of cumulative fiscal year actual
19 and budgeted expenditures and a monthly summary of
20 contributions, distributions, fees, income and net gains or
21 losses for each permanent fund and investment pool. The
22 reports shall be published on the web [~~sites~~] site of the
23 council [~~the legislature and the department of finance and~~
24 ~~administration~~] and the sunshine portal and shall be open for
25 inspection to the public and the press in the [~~office of the~~

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1 state] investment [officer] office."

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

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

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

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

15 C. The state investment officer shall make
16 investments pursuant to Subsection A of this section only upon
17 approval of the council [~~upon review of the recommendation of~~
18 ~~the private equity investment advisory committee~~] and within
19 guidelines and policies established by the council.

20 D. As used in this section:

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

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1 percent of its assets located in New Mexico; and

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

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

12 (b) holds out the prospects for capital
13 appreciation from such investments;

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

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

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

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

13 (1) the investments are made:

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

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

25 (c) in a New Mexico business that: 1)

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

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

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

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

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1 (b) is necessary to protect the
2 investment; and

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

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

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

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

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

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

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

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

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

10 (1) are filmed wholly or substantially in New
11 Mexico;

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

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

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

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

25 (a) from an entity that has a credit

1 rating of not less than Baa or BBB by a national rating agency;

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

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

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

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

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

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1 economic development department shall determine the estimated
2 amount of a film production tax credit. The [~~state investment~~]
3 council shall establish guidelines for the state investment
4 officer's initiation of a 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 that:

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

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

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

