



The Legislature
of the
State of New Mexico

51st Legislature, 1st Session

LAWS 2013

CHAPTER _____

SENATE FINANCE COMMITTEE SUBSTITUTE FOR

SENATE BILL 231, as amended

Introduced by

POCKET VETOED



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AN ACT

RELATING TO PUBLIC MONEY; ALLOWING SCHOOL DISTRICTS AND CERTAIN CHARTER SCHOOLS TO MAKE INVESTMENTS OF PUBLIC MONEY; ALLOWING SCHOOL DISTRICTS AND CERTAIN CHARTER SCHOOLS TO DETERMINE DEPOSITS WITH LOCAL QUALIFIED DEPOSITORIES.

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. "department" means the department of finance and administration;

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

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

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

E. "local governing body" means a political subdivision of the state, including a school district, a charter school whose governing body has been designated as a

1 board of finance or a post-secondary educational institution;

2 F. "participating government" means an eligible
3 governing body or the state treasurer on behalf of the
4 general fund that has invested money in the participating
5 government investment fund;

6 G. "secretary" means the secretary of finance and
7 administration;

8 H. "treasury" means the master depository or cash
9 concentration account held at the state's fiscal agent bank
10 and administered by the office of the state treasurer, unless
11 the context otherwise clearly indicates; and

12 I. "tribe" means a federally recognized Indian
13 nation, tribe or pueblo or a subdivision or agency of a
14 federally recognized Indian nation, tribe or pueblo, located
15 wholly or partially in New Mexico."

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

18 "6-10-10. DEPOSIT AND INVESTMENT OF FUNDS.--

19 A. Upon the certification or designation of a
20 bank, savings and loan association or credit union whose
21 deposits are insured by an agency of the United States to
22 receive public money on deposit, the state treasurer, county
23 or municipal treasurers and school district designees who
24 have on hand any public money by virtue of their offices
25 shall make deposit of that money in banks and savings and

1 loan associations and may make deposit of that money in
2 credit unions whose deposits are insured by an agency of the
3 United States, designated by the authority authorized by law
4 to so designate to receive the deposits of all money
5 thereafter received or collected by the treasurers or school
6 district designees.

7 B. County or municipal treasurers or school
8 district designees may deposit money in one or more accounts
9 with any such bank, savings and loan association or credit
10 union located in their respective counties, subject to
11 limitation on credit union accounts.

12 C. The state treasurer may deposit money in one or
13 more accounts with any such bank, savings and loan
14 association or credit union, subject to the limitation on
15 credit union accounts.

16 D. Duplicate receipts or deposit slips shall be
17 taken for each deposit made pursuant to Subsection A, B or C
18 of this section. When deposits are made by the state
19 treasurer, one copy of the receipt or deposit slip shall be
20 retained by the state treasurer and the other copy shall be
21 filed monthly on the first day of each month with the
22 financial control division of the department of finance and
23 administration. When deposits are made by the treasurer or
24 any other authorized person making the deposits for a board
25 of finance of a public or educational institution, one copy

1 of the receipt or deposit slip shall be retained by the
2 treasurer or authorized person making the deposit and the
3 other copy shall be filed monthly on the first day of each
4 month with that board of finance. When deposits are made by
5 a county or municipal treasurer, one of the duplicate
6 receipts or deposit slips shall be retained by the treasurer
7 making the deposit and the other copy shall be filed monthly
8 on the first day of each month with the secretary of the
9 board of finance of the county, municipality or school
10 district for which that treasurer is acting.

11 E. "Deposit", as used in this section, means
12 either investment or deposit and includes share, share
13 certificate and share draft.

14 F. County or municipal treasurers or school
15 district designees, with the advice and consent of their
16 respective boards of finance charged with the supervision and
17 control of the respective funds, may invest all sinking funds
18 or money remaining unexpended from the proceeds of any issue
19 of bonds or other negotiable securities of any county,
20 municipality or school district that is entrusted to their
21 care and custody and all money not immediately necessary for
22 the public uses of the counties, municipalities or school
23 districts not invested or deposited in banks, savings and
24 loan associations or credit unions in:

25 (1) bonds or negotiable securities of the

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

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

15 G. The treasurer of a class A county or the
16 treasurer of a municipality having a population of more than
17 sixty-five thousand according to the most recent federal
18 decennial census and located within a class A county, or the
19 designee of a school district, with the advice and consent of
20 the boards of finance charged with the supervision and
21 control of the funds, may invest all sinking funds or money
22 remaining unexpended from the proceeds of any issue of bonds
23 or other negotiable securities of the county, municipality or
24 school district that is entrusted to the treasurer's care and
25 custody and all money not immediately necessary for the

1 public uses of the county, municipality or school district
2 not invested or deposited in banks, savings and loan
3 associations or credit unions in:

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

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

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

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

25 The collateral required for investment in the contracts

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

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

22 J. The state treasurer, with the advice and
23 consent of the state board of finance, may also invest in
24 contracts for the present purchase and resale at a specified
25 time in the future, not to exceed one year or, in the case of

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

17 K. The state treasurer, with the advice and
18 consent of the state board of finance, may also invest in
19 contracts for the temporary exchange of state-owned
20 securities for the use of broker-dealers, banks or other
21 recognized institutional investors in securities, for periods
22 not to exceed one year for a specified fee rate. Such
23 contract shall not be invested in unless the contract is
24 fully secured by exchange of an irrevocable letter of credit
25 running to the state, cash or equivalent collateral of at

1 least one hundred two percent of the market value of the
2 securities plus accrued interest temporarily exchanged. The
3 collateral required by this subsection shall be delivered to
4 the fiscal agent of New Mexico or its designee simultaneously
5 with the transfer of funds or as soon as practicable, but no
6 later than the same day that the state-owned securities are
7 transferred.

8 L. Neither of the contracts in Subsection J or K
9 of this section shall be invested in unless the contracting
10 bank, brokerage firm or recognized institutional investor has
11 a net worth in excess of five hundred million dollars
12 (\$500,000,000).

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

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

20 (2) medium-term notes and corporate notes
21 with a maturity not exceeding five years that are rated A or
22 its equivalent or better by a nationally recognized rating
23 service and that are issued by a corporation organized and
24 operating in the United States; or

25 (3) an asset-backed obligation with a

1 maturity not exceeding five years that is rated AAA or its
2 equivalent by a nationally recognized rating service.

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

5 (1) shares of an open-ended diversified
6 investment company that:

7 (a) is registered with the United
8 States securities and exchange commission;

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

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

20 (2) individual, common or collective trust
21 funds of banks or trust companies that invest in United
22 States fixed-income securities or debt instruments authorized
23 pursuant to Subsections I, J and M of this section, provided
24 that the investment manager has assets under management of at
25 least one billion dollars (\$1,000,000,000) and the

1 investments made by the state treasurer pursuant to this
2 paragraph are less than five percent of the assets of the
3 individual, common or collective trust fund; or

4 (3) the participating government investment
5 fund managed by the office of the state treasurer.

6 Investments made pursuant to this paragraph shall be less
7 than five percent of the total assets of the participating
8 government investment fund.

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

21 P. As used in this section "school district
22 designee" means the school district or charter school
23 employee who has been designated by the superintendent of a
24 school district or head administrator of a charter school to
25 manage public funds."

1 SECTION 3. Section 6-10-36 NMSA 1978 (being Laws 1977,
2 Chapter 136, Section 1, as amended) is amended to read:

3 "6-10-36. PUBLIC MONEY DEPOSITS OF CERTAIN GOVERNMENTAL
4 UNITS--DISTRIBUTION--INTEREST.--

5 A. All public money, except that in the custody of
6 the state treasurer, institutions of higher education,
7 technical and vocational institutes, incorporated
8 municipalities and counties that have adopted home rule
9 charters as authorized by the constitution of New Mexico,
10 shall be deposited in qualified depositories in accordance
11 with the terms of this section or invested as otherwise
12 provided by law.

13 B. Deposits of funds of a governmental unit may be
14 made in noninterest-bearing checking accounts in one or more
15 banks or savings and loan associations designated as checking
16 depositories located within the geographical boundaries of
17 the governmental unit. In addition, deposits of funds may be
18 in noninterest-bearing checking accounts in one or more
19 credit unions designated as checking depositories located
20 within the geographical boundaries of the governmental unit
21 to the extent the deposits are insured by an agency of the
22 United States. If there is no checking depository within the
23 geographical boundaries of the governmental unit, one or more
24 banks, savings and loan associations or credit unions within
25 the county in which the principal office of the governmental

1 unit is located may be so designated, but credit union
2 deposits shall be insured by an agency of the United States.

3 C. Public money placed in interest-bearing
4 deposits in banks, savings and loan associations or credit
5 unions shall be proportionately distributed among all banks,
6 savings and loan associations and credit unions pursuant to
7 the formula established by the director of the financial
8 institutions division of the regulation and licensing
9 department:

10 (1) having their main or staffed branch
11 offices within the geographical boundaries of the
12 governmental unit;

13 (2) that have qualified as public
14 depositories by reason of insurance of the account by an
15 agency of the United States or by depositing collateral
16 security or by giving bond as provided by law; and

17 (3) that request a deposit of public money
18 pursuant to this section.

19 D. The deposits shall be in the proportion that
20 the deposits in offices located within the geographical
21 boundaries of the governmental unit of each bank, savings and
22 loan association or credit union that requests to receive
23 deposits bears to the total deposits in offices located
24 within the geographical boundaries of the governmental unit
25 of all banks, savings and loan associations and credit unions

1 that have their main office or staffed branch office within
2 the geographical boundaries of the governmental unit and that
3 have a main or staffed branch within the geographical
4 boundaries of the governmental unit and that have their main
5 office or staffed branch office within the geographical
6 boundaries of the governmental unit and that request a
7 deposit of public money pursuant to this section. The
8 director of the financial institutions division of the
9 regulation and licensing department shall promulgate a
10 formula for determining the deposits of banks', savings and
11 loan associations' and credit unions' main offices and
12 branches for the purposes of distribution of public money as
13 provided for by this section.

14 E. The rate of interest for all public money
15 deposited in interest-bearing accounts in banks, savings and
16 loan associations and credit unions shall be set by the state
17 board of finance, but in no case shall the rate of interest
18 be less than would be earned by investing the funds in United
19 States treasury bills of the same maturity on the day of
20 deposit. Any bank or savings and loan association that fails
21 to pay the minimum rate of interest at the time of deposit
22 provided for in this subsection for any respective deposit
23 forfeits its right to an equitable share of that deposit
24 under this section. If the deposit is part or all of the
25 proceeds of a bond issue and the interest rate prescribed in

1 this subsection materially exceeds the rate of interest of
2 the bonds, the interest rate prescribed by this subsection
3 shall be reduced on that deposit to an amount not materially
4 exceeding the interest rate of the bonds if the bond issue
5 would lose its tax-exempt status pursuant to the provisions
6 of the Internal Revenue Code of 1986, as amended.

7 F. Public money in excess of that for which banks,
8 savings and loan associations and credit unions within the
9 geographical boundaries of the governmental unit have
10 qualified may be deposited in qualified depositories in other
11 areas within the state under the same requirements for
12 payment of interest as if the money were deposited within the
13 geographical boundaries of the governmental unit or may be
14 invested as provided by law.

15 G. The department of finance and administration
16 may monitor the deposits of public money by governmental units
17 to assure full compliance with the provisions of this
18 section."

19 SECTION 4. Section 22-8-40 NMSA 1978 (being Laws 1977,
20 Chapter 136, Section 2, as amended) is amended to read:

21 "22-8-40. DEPOSIT OF PUBLIC SCHOOL FUNDS--
22 DISTRIBUTION--INTEREST.--

23 A. Public money in the custody of school districts
24 or state-chartered charter schools that have been designated
25 as boards of finance shall be deposited in qualified

1 depositories in accordance with the provisions of
2 Section 6-10-36 NMSA 1978; provided that, if the deposit is
3 part or all of the proceeds of a bond issue and the interest
4 rate materially exceeds the rate of interest of the bonds, the
5 interest rate shall be reduced on the deposit to an amount not
6 materially exceeding the interest rate of the bonds if the
7 bond issue would lose its tax-exempt status under Section 103
8 of the United States Internal Revenue Code, as amended.

9 B. Public money in excess of that for which banks,
10 savings and loan associations and credit unions within the
11 geographical boundaries of the school district have qualified
12 may be deposited in qualified depositories, including credit
13 unions, in other areas within the state under the same
14 requirements for payment of interest as if the money were
15 deposited within the geographical boundaries of the school
16 district.

17 C. The board of finance of the school district or
18 state-chartered charter school may temporarily invest money
19 held in demand deposits and not immediately needed for the
20 operation of the school district or state-chartered charter
21 school in investments permitted by Section 6-10-10 NMSA 1978.

22 D. The department of finance and administration
23 may monitor the deposits of public money by school districts
24 or state-chartered charter schools to assure full compliance
25 with the provisions of this section."

s/John A. Sanchez
John A. Sanchez, President
Senate

s/Lenore M. Naranjo
Lenore M. Naranjo, Chief Clerk
Senate

s/W. Ken Martinez
W. Ken Martinez, Speaker
House of Representatives

s/Stephen R. Arias
Stephen R. Arias, Chief Clerk
House of Representatives

Approved by me this _____ day of _____, 2013

s/Governor Susana Martinez
Governor Susana Martinez
State of New Mexico