

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 66

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

AN ACT

RELATING TO THE STATE FISC; CREATING A PREFERENCE FOR COMMUNITY
BANKS AND CREDIT UNIONS FOR CERTAIN STATE FUNDS; REQUIRING THE
DEVELOPMENT OF A PROGRAM FOR INCREASING INVESTMENT IN COMMUNITY
BANKS OR CREDIT UNIONS; REQUIRING A FEASIBILITY STUDY;
RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN
LAWS 1987.

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

Section 1. A new section of Chapter 6, Article 10 NMSA
1978 is enacted to read:

"[NEW MATERIAL] COMMUNITY BANK INVESTMENTS.--

A. The state treasurer, with the state investment
council, the department of finance and administration and the
state board of finance, shall develop, pursuant to the State
Rules Act, a program to increase state investment in

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underscored material = new
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1 certificates of deposit at institutions pursuant to Article 8,
2 Section 4 of the constitution of New Mexico to promote
3 community investment by community banks.

4 B. The state treasurer and the state investment
5 council shall promulgate rules to determine that portion of the
6 general fund operating cash depository account, bond proceeds
7 investment pools and the severance tax permanent fund that is
8 not needed to meet short-term liquidity needs pursuant to
9 Section 6-10-26 NMSA 1978 and, subsequently, create an
10 investment program for the remainder aimed at increasing
11 community bank lending to New Mexico businesses and residents.
12 The investment program rules shall include accountability and
13 reporting provisions requiring a participating community bank
14 to provide information to enable the state treasurer and state
15 investment council to evaluate the effectiveness of the
16 program, including how state funds are being used and the
17 impact of state funds on the ability of the community bank to
18 make loans to New Mexico businesses and residents.

19 C. The rules promulgated pursuant to Subsection B
20 of this section shall balance the investment priorities, such
21 as the preservation of the principal balance, the maintenance
22 of liquidity and maximum return with the need for a program
23 where the state invests in certificates of deposit with
24 maturity terms of at least one year, thereby providing
25 community banks with additional reserves to lend to New Mexico

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1 businesses.

2 D. As used in this section, "community bank" means
3 a federally insured depository institution organized under the
4 laws of New Mexico or of the United States, that is
5 headquartered in New Mexico and that has been granted a state
6 of New Mexico or federal bank charter or a credit union that is
7 insured by the national credit union administration, that is
8 organized under the laws of New Mexico or the United States and
9 that is headquartered in New Mexico."

10 Section 2. Section 6-10-35 NMSA 1978 (being Laws 1934
11 (S.S.), Chapter 24, Section 3, as amended by Laws 1987, Chapter
12 79, Section 14 and by Laws 1987, Chapter 87, Section 1) is
13 amended to read:

14 "6-10-35. FISCAL AGENT OF NEW MEXICO--STATE CHECKING
15 DEPOSITORIES--STATE DEPOSITORIES--DESIGNATION BY BOARD OF
16 FINANCE--PREFERENCES.--

17 A. The state board of finance may designate a bank
18 or savings and loan association doing business in this state
19 and having an unimpaired capital and surplus of at least one
20 hundred fifty thousand dollars (\$150,000) as the "fiscal agent
21 of New Mexico". The designation is subject to change, from
22 time to time, by the state board of finance; however, the board
23 shall formulate and adopt designation procedures, filed in
24 accordance with the State Rules Act, [~~which~~] that shall be
25 adhered to on each occasion of designation. The board, after

.181289.5

1 it has designated the [~~state~~] fiscal agent, shall apprise the
2 legislature of its action and, in addition to the name of the
3 designated fiscal agent, the communication shall include a
4 brief description of the designee's particular qualifications.

5 B. The bank or savings and loan association [~~se~~]
6 designated as the fiscal agent of New Mexico shall enter into
7 an agreement with the state, acting through [~~its~~] the state
8 board of finance, for:

9 (1) the collection for the state of all checks
10 and other items received by the state on any account;

11 (2) the handling of the checking account of
12 the state treasurer;

13 (3) the handling of all transfers of money in
14 connection with the sale or retirement of bonds or obligations
15 of the state or the purchase by the state of bonds or other
16 securities;

17 (4) the investment of permanent or other funds
18 of the state;

19 (5) the safekeeping of bonds or other
20 securities belonging to or held by the state or any official
21 [~~thereof~~] of the state;

22 (6) the rate of interest to be paid upon
23 average daily balances of state funds; and

24 (7) acting as the agent of the state in fiscal
25 matters generally, subject always to the supervision and

.181289.5

1 approval of the state board of finance.

2 C. The agreement shall contain the terms and
3 conditions [~~which~~] that are necessary, in the judgment of the
4 state board of finance, for the proper conduct of the fiscal
5 affairs of the state and the safekeeping of the money of the
6 state.

7 D. The state board of finance shall require the
8 fiscal agent of New Mexico to furnish surety company bond or
9 securities of the kinds specified by law for the security of
10 deposits of public money in an amount not less than two million
11 five hundred thousand dollars (\$2,500,000) as security for the
12 safekeeping of the money of the state and the faithful
13 performance of its duties as the fiscal agent. The state board
14 of finance may adjust the amount of bond or security from time
15 to time, but in no event shall the bond or security be in an
16 amount less than two million five hundred thousand dollars
17 (\$2,500,000). No other bond or security is required of the
18 fiscal agent for the securing of funds deposited by the state
19 treasurer in the fiscal agency account, and the state treasurer
20 is not liable upon [~~his~~] the state treasurer's official bond on
21 account of [~~any~~] funds deposited in the fiscal agency account
22 when the account is so secured. Nothing in this section shall
23 prevent the bank or savings and loan association designated as
24 fiscal agent from also qualifying as a state depository [~~under~~
25 ~~Sections 11-2-18 NMSA 1953 or 6-10-30, 6-10-35 and 6-10-36]~~

.181289.5

1 pursuant to Chapter 6, Article 10 NMSA 1978.

2 E. Payment to the fiscal agent of New Mexico for
3 services performed may be made by the state board of finance
4 upon warrants drawn by the secretary [~~of finance and~~
5 ~~administration~~] upon the state treasury as provided by law for
6 expenditure of state funds or by compensating balances or a
7 combination thereof. The legislature shall appropriate funds
8 to the state board of finance for this purpose annually.

9 F. The state board of finance may also designate,
10 according to its adopted designation procedures, not more than
11 two other banks or savings and loan associations doing business
12 in this state as "state checking depositories" in which money
13 necessary to meet the current obligations of the state may be
14 deposited in temporary checking accounts. No bank or savings
15 and loan association shall be so designated unless it has an
16 unimpaired capital and surplus of at least one hundred fifty
17 thousand dollars (\$150,000). Not more than twenty percent of
18 all the state's money on hand shall be on deposit in all such
19 checking accounts, including the checking account with the
20 fiscal agent of New Mexico, for any period of time longer than
21 is required to distribute the amount above twenty percent to
22 applying, qualified depository banks or savings and loan
23 associations. The state board of finance shall require a
24 designated state checking depository to furnish surety company
25 bond or securities of the kinds specified by law for the

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1 security of deposits of public money in an amount established
 2 by the board. Nothing in this section shall prevent [~~any~~] a
 3 bank or savings and loan association designated as a state
 4 checking depository from also qualifying as a state depository
 5 [~~under Sections 11-2-18 NMSA 1953 and 6-10-30, 6-10-35 and~~
 6 ~~6-10-36~~] pursuant to Chapter 6, Article 10 NMSA 1978, and
 7 nothing in this section shall prohibit the state treasurer from
 8 transferring to out-of-state banks and keeping on deposit with
 9 them funds necessary to pay interest upon and principal of
 10 those outstanding bonds, debentures and certificates of
 11 indebtedness [~~which~~] that, with the interest coupons, were made
 12 payable at an out-of-state bank.

13 G. [~~Any~~] An authorized bank, savings and loan
 14 association or credit [~~unions~~] union desiring to receive public
 15 money deposits may file with the board of finance having
 16 control of [~~any such~~] the money its written proposal to receive
 17 the money on deposit, together with its agreement to pay
 18 interest on daily balances of the deposits at the rate of
 19 interest fixed by the state board of finance as prescribed in
 20 Section 6-10-30 NMSA 1978. The proposal shall specify whether
 21 the deposit is desired as a time deposit. [~~Such~~] The board of
 22 finance shall, at its next meeting after receipt of the
 23 proposal, consider the proposal, and, if it is in accordance
 24 with [~~Sections 11-2-18 NMSA 1953 and 6-10-30, 6-10-35 and~~
 25 ~~6-10-36~~] Chapter 6, Article 10 NMSA 1978, the board shall

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1 thereupon notify the bank or savings and loan association that
2 upon its furnishing security as provided, it will be designated
3 as a "state depository" of public money in an amount to be
4 fixed by the board, which amount shall not exceed seventy-five
5 percent of the capital and surplus of the applicant bank or
6 savings and loan association if the deposit is secured by
7 surety bond. If, after considering the proposal of a credit
8 union and finding it in accordance with [~~Sections 6-10-30 and~~
9 Section 6-10-36 NMSA 1978, the board of finance may designate
10 [~~such~~] the credit union a "state depository" of public money in
11 an amount to be fixed by the board, which shall not exceed that
12 amount insured by an agency of the United States. Upon
13 furnishing proper bond or other security authorized by
14 [~~Sections 11-2-18 NMSA 1953 and 6-10-30, 6-10-35 and 6-10-36]~~
15 Chapter 6, Article 10 NMSA 1978, a certificate shall be issued
16 to the bank or savings and loan association by the state board
17 of finance qualifying it as a depository of public money; and,
18 if designated, a certificate shall be issued to a credit union
19 qualifying it as a depository of public money; provided that a
20 bank located [~~without~~] outside the state, acting solely in the
21 capacity of a paying bank for the purpose of paying interest
22 upon and principal of state obligations represented by bonds,
23 debentures and certificates of indebtedness and attached
24 interest coupons, is not required to furnish collateral
25 security in excess of one hundred thousand dollars (\$100,000)

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1 regardless of the amount of state public money on deposit.

2 H. The state board of finance shall give a
 3 preference to a community bank to act as the fiscal agent bank
 4 of the state. When proposals are received from a community
 5 bank and a nonresident bank, the contract shall be awarded to
 6 the community bank if:

7 (1) the community bank meets the minimum
 8 requirements of the state board of finance;

9 (2) the proposal price of the community bank
 10 when multiplied by a factor of .9 is lower than the proposal
 11 price of a nonresident bank; and

12 (3) the community bank proposal meets or
 13 exceeds the other evaluation criteria set in the scope of
 14 procurement by the state board of finance.

15 I. As used in this section:

16 (1) "community bank" means a federally insured
 17 depository institution organized under the laws of New Mexico
 18 or of the United States, that is headquartered in New Mexico
 19 and that has been granted a state of New Mexico or federal bank
 20 charter, or a credit union that is insured by the national
 21 credit union administration, that is organized under the laws
 22 of New Mexico or the United States and that is headquartered in
 23 New Mexico; and

24 (2) "nonresident bank" means a federally
 25 insured depository institution that is headquartered in a state

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1 other than New Mexico."

2 Section 3. TEMPORARY PROVISION--STUDY.--The state
3 treasurer, secretary of finance and administration and a
4 representative from the state investment council and state
5 board of finance shall study the feasibility of dividing the
6 general fund operating cash depository account between
7 community banks and credit unions in order to ensure that state
8 money benefits New Mexico residents. The state treasurer shall
9 report the results of the study to the legislative finance
10 committee and the governor by December 1, 2010.