

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  
[bracketed material] = delete

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

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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

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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]~~

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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.