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HOUSE BILL 80

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Nick L. Salazar

**FOR THE ECONOMIC AND RURAL DEVELOPMENT AND
TELECOMMUNICATIONS COMMITTEE**

AN ACT

**RELATING TO ECONOMIC DEVELOPMENT; CLARIFYING THE POWERS AND
STATUS OF THE SMALL BUSINESS INVESTMENT CORPORATION; CLARIFYING
THE CRITERIA REQUIRED OF INVESTMENTS; DECLARING AN EMERGENCY.**

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

**Section 1. Section 6-10-10.1 NMSA 1978 (being Laws 1988,
Chapter 61, Section 2, as amended) is amended to read:**

**"6-10-10.1. SHORT-TERM INVESTMENT FUND CREATED--
DISTRIBUTION OF EARNINGS--REPORT OF INVESTMENTS. --**

**A. There is created in the state treasury the
"short-term investment fund". The fund shall consist of all
deposits from governmental entities and Indian tribes or
pueblos that are placed in the custody of the state treasurer
for short-term investment purposes pursuant to this section.
The state treasurer shall maintain a separate account for each**

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1 governmental entity and Indian tribe or pueblo having deposits
2 in the fund.

3 B. If ~~any~~ a local public body is unable to
4 receive payment on public money at the rate of interest as set
5 forth in Section 6-10-36 NMSA 1978 from financial institutions
6 within the geographic boundaries of the governmental unit, then
7 a local public finance official having money of that local
8 public body in his custody not required for current expenditure
9 may, with the consent of the appropriate local board of
10 finance, if any, remit some or all of such money to the state
11 treasurer for deposit for the purpose of short-term investment
12 as allowed by this section.

13 C. Before ~~any~~ local funds are invested or
14 reinvested for the purpose of short-term investment pursuant to
15 this section, the local public body finance official shall
16 notify and make such funds available to banks, savings and loan
17 associations and credit unions located within the geographical
18 boundaries of their respective governmental unit, subject to
19 the limitation on credit union accounts. To be eligible for
20 such funds, the financial institution shall pay to the local
21 public body the rate established by the state treasurer
22 pursuant to a policy adopted by the state board of finance for
23 such short-term investments.

24 D. The local public body finance official shall
25 specify the length of time ~~each~~ a deposit shall be in the

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1 short-term investment fund, but in any event the deposit shall
2 not be made for more than one hundred eighty-one days. The
3 state treasurer through the use of the state fiscal agent shall
4 separately track each such deposit and shall make such
5 information available to the public upon written request.

6 E. The state treasurer shall invest the short-term
7 investment fund as provided for state funds under Section
8 6-10-10 NMSA 1978 in investments with a maturity at the time of
9 purchase that does not exceed three hundred ninety-seven days.
10 The state treasurer may elect to have the short-term investment
11 fund consolidated for investment purposes with the state funds
12 under the control of the state treasurer; provided that
13 accurate and detailed accounting records are maintained for the
14 account of each participating entity and Indian tribe or pueblo
15 and that a proportionate amount of interest earned is credited
16 to each of the separate government accounts. The fund shall be
17 invested to achieve its objective, which is to realize the
18 maximum return consistent with safe and prudent management.

19 F. At the end of each month, all net investment
20 income or losses from investment of the short-term investment
21 fund shall be distributed by the state treasurer to the
22 contributing entities and Indian tribes or pueblos in amounts
23 directly proportionate to the respective amounts deposited in
24 the fund and the length of time the amounts in the fund were
25 invested. The state treasurer shall charge participating

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1 entities, Indian tribes and pueblos reasonable audit,
2 administrative and investment expenses to be paid directly from
3 their net investment income for the investment and
4 administrative services provided pursuant to this section.

5 G. As used in this section, "local public body"
6 means ~~[any]~~ a political subdivision of the state, including
7 school districts and ~~[any]~~ post-secondary educational
8 ~~[institution]~~ institutions.

9 H. In addition to the deposit of funds of local
10 public bodies, the state treasurer may also accept for deposit,
11 deposit and account for, in the same manner as funds of local
12 public bodies, funds of the following governmental entities if
13 the governing authority of the entity approves by resolution
14 the deposit of the funds for the short-term investment:

15 (1) the agricultural commodity commission
16 established under the Agricultural Commodity Commission Act;

17 (2) the Albuquerque metropolitan arroyo flood
18 control authority established under the Arroyo Flood Control
19 Act;

20 (3) the business improvement district
21 management committee established under the Business Improvement
22 District Act;

23 (4) the New Mexico community development
24 council established under the New Mexico Community Assistance
25 Act;

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- 1 (5) the governing authority of only special
- 2 districts authorized under Chapter 73 NMSA 1978;
- 3 (6) the board of trustees established under
- 4 the Economic Advancement District Act;
- 5 (7) the board of directors of a corporation or
- 6 foundation established under the Educational Assistance Act;
- 7 (8) a board of directors established under the
- 8 Flood Control District Act;
- 9 (9) the New Mexico hospital equipment loan
- 10 council established under the Hospital Equipment Loan Act;
- 11 (10) the authority established under the
- 12 Industrial and Agricultural Finance Authority Act;
- 13 (11) the authority established under the Las
- 14 Cruces Arroyo Flood Control Act;
- 15 (12) the authority established under the
- 16 Mortgage Finance Authority Act;
- 17 (13) the authority established under the
- 18 Municipal Mortgage Finance Act;
- 19 (14) the authority established under the
- 20 Public School Insurance Authority Act;
- 21 (15) the authority established under the
- 22 Southern Sandoval County Arroyo Flood Control Act;
- 23 (16) a board of trustees established under the
- 24 Special Hospital District Act; [and]
- 25 (17) the authority established under the

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1 New Mexico Finance Authority Act; and

2 (18) the corporation established under the
3 Small Business Investment Act.

4 I. In addition to the deposit of funds of local
5 public bodies, the state treasurer may also accept for deposit
6 and deposit and account for, in the same manner as funds of
7 local public bodies, funds of any Indian tribe or pueblo in the
8 state if authorized to do so under a joint powers agreement
9 executed by the state treasurer and the governing authority of
10 the Indian tribe or pueblo under the provisions of the Joint
11 Powers Agreements Act. "

12 Section 2. Section 7-27-5.15 NMSA 1978 (being Laws 1990,
13 Chapter 126, Section 5, as amended by Laws 2001, Chapter 238,
14 Section 1 and also by Laws 2001, Chapter 252, Section 10) is
15 amended to read:

16 "7-27-5.15. NEW MEXICO PRIVATE EQUITY [~~FUND~~] FUNDS AND
17 SMALL BUSINESS INVESTMENTS. --

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

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

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1 New Mexico private equity fund shall not exceed fifty percent
2 of the committed capital of that fund.

3 C. In making investments pursuant to Subsection A
4 of this section, the council shall give consideration to
5 investments in New Mexico private equity funds whose
6 investments enhance the economic development objectives of the
7 state.

8 D. The state investment officer shall make
9 investments pursuant to Subsection A of this section only upon
10 approval of the council and upon review of the recommendation
11 of the private equity investment advisory committee. The state
12 investment officer is authorized to make investments pursuant
13 to Subsection A of this section contingent upon a New Mexico
14 private equity fund securing paid-in investments from other
15 accredited investors for the balance of the minimum committed
16 capital of the fund.

17 E. As used in this section:

18 (1) "committed capital" means the sum of the
19 fixed amounts of money that accredited investors have obligated
20 for investment in a New Mexico private equity fund and which
21 fixed amounts may be invested in that fund on one or more
22 payments over time; and

23 (2) "New Mexico private equity fund" means
24 ~~any~~ a limited partnership, limited liability company or
25 corporation organized and operating in the United States and

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1 maintaining an office staffed by a full-time investment officer
2 in New Mexico that:

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

8 (b) holds out the prospects for capital
9 appreciation from such investments;

10 (c) has a minimum committed capital of
11 fifteen million dollars (\$15,000,000);

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

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

24 (f) accepts investments only from
25 accredited investors as that term is defined in Section 2 of

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1 the federal Securities Act of 1933, as amended, (15 [~~U.S.C.~~]
2 USCA Section 77(b)) and rules and regulations promulgated
3 pursuant to that section.

4 F. The state investment officer shall make a
5 commitment to the small business investment corporation
6 pursuant to the Small Business Investment Act to invest one-
7 fourth [~~of one~~] percent of the market value of the severance
8 tax permanent fund by July 1, 2001 to create new job
9 opportunities by providing capital for land, buildings or
10 infrastructure for facilities to support new or expanding
11 businesses [~~If invested capital in the small business~~
12 ~~investment corporation should at any time fall below one-fourth~~
13 ~~of one percent of the market value of the severance tax~~
14 ~~permanent fund] and to otherwise make investments to create new
15 job opportunities to support new or expanding businesses in a
16 manner consistent with the constitution of New Mexico. On July
17 1, 2003 and on each July 1 thereafter, the state investment
18 officer shall determine whether the invested capital in the
19 small business investment corporation is less than one-fourth
20 percent of the market value of the severance tax permanent
21 fund. If the invested capital in the small business investment
22 corporation is less than one-fourth percent of the market value
23 of the severance tax permanent fund, further commitments shall
24 be made until the invested capital is equal to one-fourth [~~of~~
25 ~~one~~] percent of the market value of the fund. [~~As used in this~~~~

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1 ~~subsection, "invested capital" means the original capital~~
2 ~~contributed less any return of cost by the private equity~~
3 ~~funds.]~~

4 G. The state investment officer shall report
5 semiannually on the New Mexico private equity investments made
6 pursuant to this section. Annually, a report shall be
7 submitted to the legislature prior to the beginning of each
8 regular legislative session and a second report no later than
9 October 1 each year to the legislative finance committee, the
10 revenue stabilization and tax policy committee and any other
11 appropriate interim committee. Each report shall provide the
12 amounts invested in each New Mexico private equity fund, as
13 well as information about the objectives of the funds, the
14 companies in which each fund is invested and how each
15 investment enhances the economic development objectives of the
16 state."

17 Section 3. Section 41-4-3 NMSA 1978 (being Laws 1976,
18 Chapter 58, Section 3, as amended) is amended to read:

19 "41-4-3. DEFINITIONS. --As used in the Tort Claims Act:

20 A. "board" means the risk management advisory
21 board;

22 B. "governmental entity" means the state or any
23 local public body as defined in Subsections C and H of this
24 section;

25 C. "local public body" means all political

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1 subdivisions of the state and their agencies, instrumentalities
2 and institutions and all water and natural gas associations
3 organized pursuant to Chapter 3, Article 28 NMSA 1978;

4 D. "law enforcement officer" means [~~any~~] a full-
5 time salaried public employee of a governmental entity whose
6 principal duties under law are to hold in custody any person
7 accused of a criminal offense, to maintain public order or to
8 make arrests for crimes, or members of the national guard when
9 called to active duty by the governor;

10 E. "maintenance" does not include:

11 (1) conduct involved in the issuance of a
12 permit, driver's license or other official authorization to use
13 the roads or highways of the state in a particular manner; or

14 (2) an activity or event relating to a public
15 building or public housing project that was not foreseeable;

16 F. "public employee" means [~~any~~] an officer,
17 employee or servant of a governmental entity, excluding
18 independent contractors except for individuals defined in
19 Paragraphs (7), (8), (10) and (14) of this subsection, or of a
20 corporation organized pursuant to the Educational Assistance
21 Act, the Small Business Investment Act or the Mortgage Finance
22 Authority Act and including:

23 (1) elected or appointed officials;

24 (2) law enforcement officers;

25 (3) persons acting on behalf or in service of

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1 a governmental entity in any official capacity, whether with or
2 without compensation;

3 (4) licensed foster parents providing care for
4 children in the custody of the human services department,
5 corrections department or department of health, but not
6 including foster parents certified by a licensed child
7 placement agency;

8 (5) members of state or local selection panels
9 established pursuant to the Adult Community Corrections Act;

10 (6) members of state or local selection panels
11 established pursuant to the Juvenile Community Corrections Act;

12 (7) licensed medical, psychological or dental
13 arts practitioners providing services to the corrections
14 department pursuant to contract;

15 (8) members of the board of directors of the
16 New Mexico [~~comprehensive health~~] medical insurance pool;

17 (9) individuals who are members of medical
18 review boards, committees or panels established by the
19 educational retirement board or the retirement board of the
20 public employees retirement association;

21 (10) licensed medical, psychological or dental
22 arts practitioners providing services to the children, youth
23 and families department pursuant to contract;

24 (11) members of the board of directors of the
25 New Mexico educational assistance foundation;

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1 (12) members of the board of directors of the
2 New Mexico student loan guarantee corporation;

3 (13) members of the New Mexico mortgage
4 finance authority; [~~and~~]

5 (14) volunteers, employees and board members
6 of court-appointed special advocate programs; and

7 (15) members of the board of directors of the
8 small business investment corporation;

9 G. "scope of [~~duties~~] duty" means performing any
10 duties that a public employee is requested, required or
11 authorized to perform by the governmental entity, regardless of
12 the time and place of performance; and

13 H. "state" or "state agency" means the state of New
14 Mexico or any of its branches, agencies, departments,
15 boards, instrumentalities or institutions. "

16 Section 4. Section 58-29-1 NMSA 1978 (being Laws 2000,
17 Chapter 97, Section 3) is amended to read:

18 "58-29-1. SHORT TITLE. -- [~~Sections 3 through 8 of this~~
19 ~~act~~] Chapter 58, Article 29 NMSA 1978 may be cited as the
20 "Small Business Investment Act". "

21 Section 5. Section 58-29-2 NMSA 1978 (being Laws 2000,
22 Chapter 97, Section 4) is amended to read:

23 "58-29-2. [~~PURPOSE~~] PURPOSES. -- The [~~purpose~~] purposes of
24 the Small Business Investment Act [~~is~~] are to:

25 A. implement the provisions of Subsection D of

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1 Section 14 of Article 9 [~~Section 14~~] of the constitution of New
2 Mexico to create new job opportunities by providing capital for
3 land, buildings or infrastructure for facilities to support new
4 or expanding businesses; and

5 B. otherwise make debt investments and equity
6 investments to create new job opportunities to support new or
7 expanding businesses in a manner consistent with the
8 constitution of New Mexico. "

9 Section 6. Section 58-29-3 NMSA 1978 (being Laws 2000,
10 Chapter 97, Section 5) is amended to read:

11 "58-29-3. DEFINITIONS. --As used in the Small Business
12 Investment Act:

13 A. "board" means the small business investment
14 corporation's board;

15 B. "corporation" means the small business
16 investment corporation; [~~and~~]

17 C. "debt investment" means direct or indirect loans
18 or other debt obligations, the proceeds of which shall be used
19 to:

20 (1) support the acquisition or development of
21 land, buildings or infrastructure;

22 (2) create job opportunities; or

23 (3) otherwise enhance the economic development
24 objectives of the state;

25 D. "equity investment" means direct or indirect

1 ownership interests in New Mexico businesses, the proceeds of
2 which investment shall be used to:

3 (1) support the acquisition or development of
4 land, buildings or infrastructure;

5 (2) create job opportunities; or

6 (3) otherwise enhance the economic development
7 objectives of the state;

8 E. "fund" means the small business investment
9 corporation fund;

10 F. "New Mexico business" means, in the case of a
11 corporation or limited liability company, a business with its
12 principal office and a majority of its full-time employees
13 located in New Mexico or, in the case of a limited partnership,
14 a business with its principal place of business and eighty
15 percent of its assets located in New Mexico; and

16 ~~[E-]~~ G. "president" means the president of the
17 corporation. "

18 Section 7. Section 58-29-4 NMSA 1978 (being Laws 2000,
19 Chapter 97, Section 6, as amended) is amended to read:

20 "58-29-4. SMALL BUSINESS INVESTMENT CORPORATION
21 CREATED-- POWERS OF THE CORPORATION. --

22 A. The "small business investment corporation" is
23 created as a nonprofit, independent, public corporation [~~for~~
24 ~~the purpose of creating new job opportunities by making equity~~
25 ~~investments in land, buildings or infrastructure for facilities~~

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1 to support new or expanding businesses]. The corporation may:

2 [~~(1)~~ make equity investments in New Mexico
3 small businesses that:

4 (a) have rural development business and
5 industrial loans approved by the United States small business
6 administration or the United States department of agriculture
7 or indebtedness otherwise collateralized to the satisfaction of
8 the board;

9 (b) are no more than forty nine percent
10 of the total capital equity of a business; and

11 (c) pay an annual dividend to the
12 severance tax permanent fund of not less than five percent of
13 the original capital equity investment by the corporation in
14 the small business;

15 ~~(2)~~ hold redeemable preferred stock of a small
16 business for a fixed period of time not to exceed ten years and
17 have rural development business and industrial loans approved
18 by the United States small business administration or the
19 United States department of agriculture or indebtedness
20 otherwise collateralized to the satisfaction of the board;

21 ~~(3)~~ (1) sue and be sued in all actions
22 arising out of any act or omission in connection with its
23 business or affairs;

24 ~~(4)~~ (2) enter into any contracts or
25 obligations relating to the corporation that are authorized or

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1 permitted by law;

2 ~~[(5)]~~ (3) cooperate with small business
3 development centers, ~~[and]~~ regional economic development
4 districts and parties that have demonstrated abilities and
5 relationships in providing financial services to new and
6 emerging businesses;

7 ~~[(6)]~~ ~~invest not more than ten percent of the~~
8 ~~fund in any one small business enterprise; and~~

9 ~~(7)]~~ (4) make investments that consider the
10 enhancement of economic development objectives of the state as
11 described in the Small Business Investment Act; and

12 (5) make, alter or repeal such rules with
13 respect to the corporation's operations as are necessary to
14 carry out its functions and duties in the administration of the
15 Small Business Investment Act.

16 B. The corporation shall not be considered a state
17 agency for any purpose. The corporation is exempted from the
18 provisions of the Personnel Act and the Procurement Code.

19 C. Except as provided in the Tort Claims Act, the
20 state shall not be liable for any obligations incurred by the
21 corporation. "

22 Section 8. A new section of the Small Business Investment
23 Act is enacted to read:

24 " [NEW MATERIAL] PERMITTED INVESTMENTS. --The corporation
25 may:

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1 A. make equity investments in New Mexico businesses
2 that have either a loan guaranteed by the United States
3 department of agriculture pursuant to its business and industry
4 guaranteed loan program authorized pursuant to 7 Code of
5 Federal Regulations, Part 4279, or any successor provision; a
6 loan guaranteed by the United States small business
7 administration pursuant to its Section 7(a) guaranteed loan
8 program authorized pursuant to 13 Code of Federal Regulations,
9 Part 120.200, or any successor provision; or a loan offered in
10 conjunction with the United States small business
11 administration Section 504 development company loan program
12 authorized pursuant to 13 Code of Federal Regulations, Part
13 120.800, or any other similar provision, provided that:

14 (1) the investments are in the form of a
15 preferred equity investment redeemable within ten years of the
16 date of issuance;

17 (2) the investments represent no more than
18 forty-nine percent of the total amount of equity from invested
19 capital of a business;

20 (3) the investments pay an annual dividend to
21 the corporation of not less than five percent of the original
22 capital equity investment by the corporation in the business;
23 and

24 (4) an equity investment in any one business
25 may not exceed ten percent of the fund;

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1 B. make equity investments in New Mexico businesses
2 that have no loan guarantees pursuant to Subsection A of this
3 section, provided that:

4 (1) the investments are made in conjunction
5 with cooperative agreements with parties that have demonstrated
6 abilities and relationships in providing financial services to
7 new and emerging businesses;

8 (2) an equity investment in any one business
9 may not exceed ten percent of the fund; and

10 (3) the investments represent no more than
11 forty-nine percent of the total amount of equity from invested
12 capital of a business; or

13 C. make debt investments in New Mexico businesses
14 that have no loan guarantees pursuant to Subsection A of this
15 section, provided that:

16 (1) the investments are made in conjunction
17 with cooperative agreements with parties that have demonstrated
18 abilities and relationships in providing financial services to
19 new and emerging businesses; and

20 (2) a debt investment in any one business may
21 not exceed ten percent of the fund."

22 Section 9. A new section of the Small Business Investment
23 Act is enacted to read:

24 "[NEW MATERIAL] RETURN TO SEVERANCE TAX PERMANENT FUND. --
25 Annually, no later than thirty days after the delivery of its

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1 annual report to the governor and the legislative finance
2 committee, the corporation shall return to the severance tax
3 permanent fund an amount equal to the net excess of funds held
4 by the corporation. For purposes of this section, "net excess
5 of funds" means the return on investments to the corporation in
6 the amount of dividends and interest actually received plus any
7 capital gains actually realized, less the operating expenses of
8 the corporation and less amounts reasonably reserved for
9 losses. "

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