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HOUSE BILL 387

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Nick L. Salazar

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; ADOPTING INVESTMENT
ALLOCATIONS AND DEFINITIONS RELATED TO THE NEW MEXICO SMALL
BUSINESS INVESTMENT COUNCIL.

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

Section 1. Section 7-27-5.15 NMSA 1978 (being Laws 1990,
Chapter 126, Section 5, as amended by Laws 2003, Chapter 399,
Section 2 and by Laws 2003, Chapter 401, Section 1 and also by
Laws 2003, Chapter 406, Section 1) is amended to read:

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

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

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1 B. In making investments pursuant to Subsection A
2 of this section, the council shall make investments in New
3 Mexico private equity funds or New Mexico businesses whose
4 investments or enterprises enhance the economic development
5 objectives of the state.

6 C. The state investment officer shall make
7 investments pursuant to Subsection A of this section only upon
8 approval of the council, upon review of the recommendation of
9 the private equity investment advisory committee and within
10 guidelines and policies established by the council.

11 D. As used in this section:

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

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

23 (a) has as its primary business activity
24 the investment of funds in return for equity in or debt of
25 businesses for the purpose of providing capital for start-up,

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1 expansion, product or market development, recapitalization or
2 similar business purposes;

3 (b) holds out the prospects for capital
4 appreciation from such investments;

5 (c) has at least one full-time manager
6 with at least three years of professional experience in
7 assessing the growth prospects of businesses or evaluating
8 business plans and who has established permanent residency in
9 the state;

10 (d) is committed to investing or helps
11 secure investing by others, in an amount at least equal to the
12 total investment made by the state investment officer in that
13 fund pursuant to this section, in businesses with a principal
14 place of business in the state and that hold promise for
15 attracting additional capital from individual or institutional
16 investors nationwide for businesses in the state; and

17 (e) accepts investments only from
18 accredited investors as that term is defined in Section 2 of
19 the federal Securities Act of 1933, as amended (15 USCA Section
20 77(b)), and rules and regulations promulgated pursuant to that
21 section.

22 E. The state investment officer is authorized to
23 make investments in New Mexico businesses to create new job
24 opportunities and to support new, emerging or expanding
25 businesses in a manner consistent with the constitution of New

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1 Mexico if:

2 (1) the investments are made in conjunction
3 with cooperative investment agreements with parties that have
4 demonstrated abilities and relationships in making investments
5 in new, emerging or expanding businesses;

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

9 (3) the investments represent no more than
10 fifty-one percent of the total investment capital in a
11 business; provided, however, that nothing in this subsection
12 prohibits the ownership of more than fifty-one percent of the
13 total investment capital in a New Mexico business if the
14 additional ownership interest:

15 (a) is due to foreclosure or other
16 action by the state investment officer pursuant to agreements
17 with the business or other investors in that business;

18 (b) is necessary to protect the
19 investment; and

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

22 F. The state investment officer shall make a
23 commitment to the small business investment corporation
24 pursuant to the Small Business Investment Act to invest [~~one-~~
25 ~~fourth~~] one-half percent of the market value of the severance

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1 tax permanent fund by July 1, 2001 to create new job
2 opportunities by providing capital for land, buildings or
3 infrastructure for facilities to support new or expanding
4 businesses and to otherwise make investments to create new job
5 opportunities to support new or expanding businesses in a
6 manner consistent with the constitution of New Mexico. On July
7 1, 2003 and on each July 1 thereafter, the state investment
8 officer shall determine whether the invested capital in the
9 small business investment corporation is less than [~~one-fourth~~]
10 one-half percent of the market value of the severance tax
11 permanent fund. If the invested capital in the small business
12 investment corporation equals less than [~~one-fourth~~] one-half
13 percent of the market value of the severance tax permanent
14 fund, further commitments shall be made until the invested
15 capital is equal to [~~one-fourth~~] one-half percent of the market
16 value of the fund.

17 G. The state investment officer shall report
18 semiannually on the New Mexico private equity investments made
19 pursuant to this section. Annually, a report shall be
20 submitted to the legislature prior to the beginning of each
21 regular legislative session and a second report no later than
22 October 1 each year to the legislative finance committee, the
23 revenue stabilization and tax policy committee and any other
24 appropriate interim committee. Each report shall provide the
25 amounts invested in each New Mexico private equity fund, as

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1 well as information about the objectives of the funds, the
2 companies in which each fund is invested and how each
3 investment enhances the economic development objectives of the
4 state. Each report shall provide the amounts invested in each
5 New Mexico business."

6 Section 2. Section 58-29-3 NMSA 1978 (being Laws 2000,
7 Chapter 97, Section 5, as amended) is amended to read:

8 "58-29-3. DEFINITIONS.--As used in the Small Business
9 Investment Act:

10 A. "board" means the [~~small business investment~~]
11 corporation's board;

12 B. "cooperative agreement" means an agreement
13 entered into by the corporation with a party that:

14 (1) has demonstrated the capability to provide
15 business assistance to new and expanding businesses; and

16 (2) is primarily engaged or proposes to
17 primarily engage in the business of providing business services
18 and debt or equity capital to new and expanding businesses;

19 [~~B-~~] C. "corporation" means the small business
20 investment corporation;

21 [~~G-~~] D. "debt investment" means direct or indirect
22 loans or other debt obligations, the proceeds of which shall be
23 used to:

24 (1) support the acquisition or development of
25 land, buildings or infrastructure;

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- 1 (2) create job opportunities; or
2 (3) otherwise enhance the economic development
3 objectives of the state;

4 ~~[D.]~~ E. "equity investment" means direct or
5 indirect ownership interests in New Mexico businesses, the
6 proceeds of which investment shall be used to:

7 (1) support the acquisition or development of
8 land, buildings or infrastructure;

9 (2) create job opportunities; or

10 (3) otherwise enhance the economic development
11 objectives of the state;

12 ~~[E.]~~ F. "fund" means the small business investment
13 corporation fund;

14 ~~[F.]~~ G. "New Mexico business" means ~~[in the case of~~
15 ~~a corporation or limited liability company]~~ a business with its
16 principal office and a majority of its full-time employees
17 located in New Mexico ~~[or, in the case of a],~~ including a sole
18 proprietorship, partnership, limited partnership ~~[a business~~
19 ~~with its principal place of business and eighty percent of its~~
20 ~~assets located in New Mexico],~~ limited liability company or
21 corporation; and

22 ~~[G.]~~ H. "president" means the president of the
23 corporation."

24 Section 3. Section 58-29-5.1 NMSA 1978 (being Laws 2003,
25 Chapter 399, Section 9) is amended to read:

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1 "58-29-5.1. PERMITTED INVESTMENTS.--The corporation may:

2 A. make equity investments in New Mexico
3 businesses, provided that:

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

8 (2) an equity investment in any one business
9 may not exceed ten percent of the fund; provided, however, that
10 the restrictions of this paragraph shall not apply to equity
11 investments in entities that are parties to cooperative
12 agreements, but shall apply to investments made by such
13 entities pursuant to cooperative agreements; and

14 (3) the investments represent no more than
15 forty-nine percent of the total [~~amount of~~] equity [~~from~~
16 ~~invested~~] capital of a business; provided, however, that the
17 restrictions of this paragraph shall not apply to equity
18 investments in entities that are parties to cooperative
19 agreements, but shall apply to investments made by such
20 entities pursuant to cooperative agreements; or

21 B. make debt investments in New Mexico businesses,
22 provided that:

23 (1) the investments are made [~~in conjunction~~
24 ~~with~~] pursuant to cooperative agreements [~~with parties that~~
25 ~~have demonstrated abilities and relationships in providing~~

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1 ~~financial services to new and emerging businesses~~]; and

2 (2) a debt investment in any one business may
3 not exceed ten percent of the fund; provided, however, that the
4 restrictions of this paragraph shall not apply to debt
5 investments in entities that are parties to cooperative
6 agreements, but shall apply to debt investments made by such
7 entities pursuant to cooperative agreements."

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