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SENATE BILL 535

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

Phil A. Griego

FOR THE STATE PERMANENT FUND TASK FORCE

AN ACT

RELATING TO PUBLIC FINANCE; RECODIFYING AUTHORIZATION FOR THE STATE INVESTMENT OFFICER TO MAKE LOANS TO FILM PRODUCTION COMPANIES BASED ON EXPECTED FILM PRODUCTION TAX CREDITS; AMENDING PROVISIONS RELATING TO INVESTMENT IN NEW MEXICO FILM PROJECTS; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2005.

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

Section 1. Section 7-2C-2 NMSA 1978 (being Laws 1985, Chapter 106, Section 2, as amended) is amended to read:

"7-2C-2. PURPOSE.--

A. The purpose of the Tax Refund Intercept Program Act is to comply with state and federal law:

(1) by enhancing the enforcement of child support and medical support obligations;

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1 (2) to aid collection of outstanding debts
2 owed for overpayment of public assistance and overissuance of
3 food stamps and overpayment of unemployment compensation
4 benefits and nonpayment of contributions or payments in lieu of
5 contributions or other amounts due under the Unemployment
6 Compensation Law;

7 (3) to promote repayment of educational loans;

8 (4) to aid collection of fines, fees and costs
9 owed to the district, magistrate and municipal courts;

10 (5) to aid collection of fines, fees and costs
11 owed to the Bernalillo county metropolitan court; and

12 (6) to aid in the payment to the state
13 investment officer of film production tax credit amounts owed
14 to the state investment officer due to a loan made against the
15 credit pursuant to [~~Subsection D of Section 7-27-5.26~~] Section
16 7-27-5.27 NMSA 1978.

17 B. Efforts to accomplish the purpose of the Tax
18 Refund Intercept Program Act may be enhanced by establishing a
19 system to collect debts, in particular, outstanding child
20 support obligations, educational loans, amounts due under the
21 Unemployment Compensation Law, fines, fees and costs owed to
22 the district, magistrate and municipal courts, film production
23 tax credit amounts owed to the state investment officer and
24 fines, fees and costs owed to the Bernalillo county
25 metropolitan court, by setting off the amount of such debts

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1 against the state income tax refunds or film production tax
2 credit amounts due the debtors."

3 Section 2. Section 7-27-5.26 NMSA 1978 (being Laws 2000
4 (2nd S.S.), Chapter 6, Section 2, as amended by Laws 2005,
5 Chapter 101, Section 2 and by Laws 2005, Chapter 106, Section
6 1) is amended to read:

7 "7-27-5.26. INVESTMENT IN FILMS TO BE PRODUCED IN NEW
8 MEXICO.--

9 A. No more than five percent of the market value of
10 the severance tax permanent fund may be invested in New Mexico
11 film private equity funds or a New Mexico film project under
12 this section.

13 B. If an investment is made under this section, not
14 more than fifteen million dollars (\$15,000,000) of the amount
15 authorized for investment pursuant to Subsection A of this
16 section shall be invested in any one New Mexico film private
17 equity fund or any one New Mexico film project; provided that
18 the aggregate of the amount invested pursuant to this section
19 in a New Mexico film project and the amount loaned pursuant to
20 Section 7-27-5.27 NMSA 1978 to the film production company
21 producing the film project shall not exceed one hundred percent
22 of the cost of production of the film project, as determined
23 pursuant to guidelines established by the state investment
24 council.

25 C. The state investment officer shall make

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1 investments pursuant to this section only upon approval of the
2 state investment council after a review by the private equity
3 investment advisory committee and the New Mexico film division
4 of the economic development department. The state investment
5 officer may make debt or equity investments pursuant to this
6 section only in New Mexico film projects or New Mexico film
7 private equity funds that invest only in film projects that:

8 (1) are filmed wholly or substantially in New
9 Mexico;

10 (2) have shown to the satisfaction of the New
11 Mexico film division that a distribution contract is in place
12 with a reputable distribution company;

13 (3) have agreed that, while filming in New
14 Mexico, a majority of the production crew will be New Mexico
15 residents;

16 (4) have posted a completion bond or other
17 substantially similar guarantee of completion that has been
18 approved by the New Mexico film division; provided that a
19 completion bond shall not be required if the fund or project is
20 guaranteed pursuant to Paragraph (5) of this subsection; and

21 (5) have obtained a full, unconditional and
22 irrevocable guarantee of repayment of the invested amount in
23 favor of the severance tax permanent fund:

24 (a) from an entity that has a credit
25 rating of not less than Baa or BBB by a national rating agency;

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1 (b) from a substantial subsidiary of an
2 entity that has a credit rating of not less than Baa or BBB by
3 a national rating agency;

4 (c) by providing a full, unconditional
5 and irrevocable letter of credit from a United States
6 incorporated bank with a credit rating of not less than A by a
7 national rating agency; or

8 (d) from a substantial and solvent
9 entity as determined by the state investment council in
10 accordance with its standards and practices; or

11 (6) if not guaranteed pursuant to Paragraph
12 (5) of this subsection, have obtained no less than one-third of
13 the estimated total production costs from other sources as
14 approved by the state investment officer.

15 ~~[D. The state investment officer may loan at a~~
16 ~~market rate of interest, with respect to an eligible New Mexico~~
17 ~~film project, up to eighty percent of an expected and estimated~~
18 ~~film production tax credit available to a film production~~
19 ~~company pursuant to the provisions of Section 7-2F-1 NMSA 1978;~~
20 ~~provided that the film production company agrees to name the~~
21 ~~state investment officer as its agent for the purpose of filing~~
22 ~~an application for the film production tax credit to which the~~
23 ~~company is entitled if the company does not apply for the film~~
24 ~~production tax credit. The New Mexico film division of the~~
25 ~~economic development department shall determine the estimated~~

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1 ~~amount of a film production tax credit. The state investment~~
2 ~~council shall establish guidelines for the state investment~~
3 ~~officer's initiation of a loan and the terms of the loan.~~

4 ~~E.]~~ D. As used in this section:

5 (1) "film project" means [~~a~~] one or more
6 single media or multimedia [~~program~~] programs, including
7 advertising messages, fixed on film, videotape, computer disc,
8 laser disc or other similar delivery medium from which the
9 program can be viewed or reproduced and that is intended to be
10 exhibited in theaters; licensed for exhibition by individual
11 television stations, groups of stations, networks, cable
12 television stations or other means; or licensed for the home
13 viewing market; and

14 (2) "New Mexico film private equity fund"
15 means any limited partnership, limited liability company or
16 corporation organized and operating in the United States that:

17 (a) has as its primary business activity
18 the investment of funds in return for equity in film projects
19 produced wholly or partly in New Mexico;

20 (b) holds out the prospects for capital
21 appreciation from such investments; and

22 (c) accepts investments only from
23 accredited investors as that term is defined in Section 2 of
24 the federal Securities Act of 1933, as amended, and rules
25 promulgated pursuant to that section."

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1 Section 3. A new section of the Severance Tax Bonding
2 Act, Section 7-27-5.27 NMSA 1978, is enacted to read:

3 "7-27-5.27. [NEW MATERIAL] FILM PRODUCTION TAX CREDIT
4 LOANS.--

5 A. Up to three percent of the severance tax
6 permanent fund may be used by the state investment officer to
7 make film production tax credit loans to film production
8 companies at a market rate of interest.

9 B. A film production tax credit loan shall be in
10 an amount not to exceed eighty percent of the estimated film
11 production tax credit expected to be available to the film
12 production company pursuant to the provisions of Section
13 7-2F-1 NMSA 1978. The New Mexico film division of the
14 economic development department shall determine the estimated
15 amount of the film production tax credit.

16 C. To be eligible for a film production tax
17 credit loan, the film production company must:

18 (1) comply with the policies and procedures
19 promulgated by the state investment council;

20 (2) name the state investment officer as its
21 agent for the purpose of filing an application for the film
22 production tax credit to which the company is entitled in the
23 event that the company fails to apply for the tax credit; and

24 (3) provide adequate security to guarantee
25 repayment of the film production tax credit loan.

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1 D. The state investment council shall establish
2 policies and guidelines for the state investment officer's
3 initiation of a film production tax credit loan and for the
4 terms of the loan. The policies and guidelines shall include
5 mechanisms to insure completion of the film production that
6 is the subject of the loan or mechanisms to require full
7 repayment of the loan, plus interest or appropriate
8 additional consideration. The policies and guidelines shall
9 include appropriate penalties for a film production company
10 that fails or refuses to timely apply for the film production
11 tax credit or is otherwise noncompliant with the provisions
12 of the loan.

13 E. The state investment officer shall have the
14 right to secure the direct payment from the taxation and
15 revenue department of all or part of a film production tax
16 credit that is owed to the state investment officer as
17 repayment of a film production tax credit loan."