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SENATE BILL 742

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

INTRODUCED BY

Clinton D. Harden

AN ACT

RELATING TO THE INVESTMENT OF THE SEVERANCE TAX PERMANENT FUND;
ALLOWING INVESTMENTS IN NEW MEXICO AEROSPACE BUSINESSES WITHOUT
REQUIRING, IN CERTAIN CIRCUMSTANCES, COOPERATIVE INVESTMENT
AGREEMENTS WITH OTHER INVESTORS; DECLARING AN EMERGENCY.

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) 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.

B. In making investments pursuant to Subsection A

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1 of this section, the council shall make investments in New
2 Mexico private equity funds or New Mexico businesses whose
3 investments or enterprises enhance the economic development
4 objectives of the state.

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

10 D. As used in this section:

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

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

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

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1 similar business purposes;

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

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

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

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

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

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(1) the investments are made:

(a) in conjunction with cooperative investment agreements with parties that have demonstrated abilities and relationships in making investments in new, emerging or expanding businesses; or

(b) in New Mexico aerospace businesses that have received an award from the United States government or one of its agencies or instrumentalities: 1) in an amount, not less than one hundred million dollars (\$100,000,000), that is equal to at least ten times the investment from the severance tax permanent fund; and 2) for the purpose of stimulating commercial enterprises;

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

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

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

(b) is necessary to protect the

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1 investment; and

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

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 three-
7 fourths percent of the market value of the severance tax
8 permanent fund to create new job opportunities by providing
9 capital for land, buildings or infrastructure for facilities to
10 support new or expanding businesses and to otherwise make
11 investments to create new job opportunities to support new or
12 expanding businesses in a manner consistent with the
13 constitution of New Mexico. On July 1 of each year, the state
14 investment officer shall determine whether the invested capital
15 in the small business investment corporation is less than
16 three-fourths percent of the market value of the severance tax
17 permanent fund. If the invested capital in the small business
18 investment corporation equals less than three-fourths percent
19 of the market value of the severance tax permanent fund,
20 further commitments shall be made until the invested capital is
21 equal to three-fourths percent of the market value of the fund.

22 G. The state investment officer shall report
23 semiannually on the New Mexico private equity investments made
24 pursuant to this section. Annually, a report shall be
25 submitted to the legislature prior to the beginning of each

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1 regular legislative session and a second report no later than
2 October 1 each year to the legislative finance committee, the
3 revenue stabilization and tax policy committee and any other
4 appropriate interim committee. Each report shall provide the
5 amounts invested in each New Mexico private equity fund, as
6 well as information about the objectives of the funds, the
7 companies in which each fund is invested and how each
8 investment enhances the economic development objectives of the
9 state. Each report shall provide the amounts invested in each
10 New Mexico business."

11 Section 2. EMERGENCY.--It is necessary for the public
12 peace, health and safety that this act take effect immediately.

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