

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 290

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

Brian F. Egolf

AN ACT

RELATING TO FINANCE; ENACTING THE SMALL BUSINESS DEVELOPMENT BANK ACT; CREATING THE NEW MEXICO SMALL BUSINESS DEVELOPMENT BANK; ESTABLISHING THE SMALL BUSINESS DEVELOPMENT BANK BOARD; PROVIDING POWERS AND DUTIES; AUTHORIZING LOAN PARTICIPATION AGREEMENTS WITH COMMUNITY BANKS FOR ECONOMIC DEVELOPMENT PROJECTS; PROVIDING FOR THE INVESTMENT OF A PORTION OF THE SEVERANCE TAX PERMANENT FUND IN THE NEW MEXICO SMALL BUSINESS DEVELOPMENT BANK; PROVIDING PENALTIES.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 13 of this act may be cited as the "Small Business Development Bank Act".

SECTION 2. [NEW MATERIAL] FINDINGS AND PURPOSE.--

A. The legislature finds that:

.182509.2

underscored material = new  
[bracketed material] = delete

underscored material = new  
[bracketed material] = delete

1 (1) it is important for government to promote,  
2 support and assist in developing a thriving economic base  
3 within the state; increase opportunities for gainful employment  
4 and improved living conditions; assist in promoting a balanced  
5 and productive economy; encourage the flow of private capital  
6 for investment in productive enterprises; and otherwise improve  
7 the prosperity, health and general welfare of the people of the  
8 state;

9 (2) access to capital is vital for the well-  
10 being of the economic base of the state; and

11 (3) New Mexico can best provide necessary  
12 capital to direct economic development policy initiatives in a  
13 responsive and efficient manner with a state business  
14 development bank at its disposal.

15 B. The purpose of the Small Business Development  
16 Bank Act is to:

17 (1) create a state-owned, -controlled and  
18 -operated business development bank; and

19 (2) stimulate economic development by  
20 providing capital to the residents and small businesses of the  
21 state.

22 SECTION 3. [NEW MATERIAL] DEFINITIONS.--As used in the  
23 Small Business Development Bank Act:

24 A. "bank" means the New Mexico small business  
25 development bank;

.182509.2

underscoring material = new  
~~[bracketed material] = delete~~

1           B. "board" means the small business development  
2 bank board;

3           C. "community bank" means a federally insured  
4 depository institution organized under the laws of New Mexico  
5 that has been granted a state of New Mexico or federal bank  
6 charter;

7           D. "community bank note holder" means a community  
8 bank that has entered into a loan participation agreement with  
9 the bank pursuant to Section 7 of the Small Business  
10 Development Bank Act;

11           E. "customer" means any person who is pursuing the  
12 services of, transacting business with or has used the services  
13 of the bank, including a community bank note holder;

14           F. "economic development project" means land,  
15 buildings, improvements, machinery and equipment, operating  
16 capital and other personal property for use in providing:

17                   (1) assistance to rural or underserved areas  
18 designed to increase business activity;

19                   (2) retention and expansion of existing  
20 business enterprises;

21                   (3) attraction of new business enterprises; or

22                   (4) creation and promotion of an environment  
23 suitable for the support of start-up and emerging business  
24 enterprises within the state; and

25           G. "New Mexico business" means, in the case of a

.182509.2

underscoring material = new  
~~[bracketed material] = delete~~

1 corporation or limited liability company, a business with its  
2 principal office and a majority of its full-time employees  
3 located in New Mexico or, in the case of a limited partnership,  
4 a business with its principal place of business and eighty  
5 percent of its assets located in New Mexico.

6 SECTION 4. [NEW MATERIAL] NEW MEXICO SMALL BUSINESS  
7 DEVELOPMENT BANK CREATED--OPERATION OF THE BANK--LIMITATIONS--  
8 LOCATION.--

9 A. For the purpose of encouraging and promoting  
10 economic development, commerce and industry, there is created a  
11 public body politic and corporate, separate and apart from the  
12 state, constituting a governmental instrumentality to be known  
13 as the "New Mexico small business development bank".

14 B. The board shall operate, manage and control the  
15 bank, including creation and enforcement of rules for the  
16 transaction of the bank's business.

17 C. The bank is not created or organized, and its  
18 operations shall not be conducted, for the purpose of making a  
19 profit. No part of the revenues or assets of the bank shall  
20 benefit, or be distributable to, its board members or other  
21 private persons.

22 D. The bank shall not be subject to the supervision  
23 or control of any other board, bureau, department or agency of  
24 the state except as specifically provided in the Small Business  
25 Development Bank Act. No use of the terms "state agency" or

.182509.2

underscoring material = new  
[bracketed material] = delete

1 "instrumentality" in any other law of the state shall be deemed  
2 to refer to the bank unless the bank is specifically referred  
3 to in the law. The bank is a governmental instrumentality for  
4 purposes of the Tort Claims Act.

5 E. The business and financial transactions of the  
6 bank are limited to those expressly provided for in the Small  
7 Business Development Bank Act.

8 F. The bank's principal place of business shall be  
9 in Santa Fe, New Mexico.

10 SECTION 5. [NEW MATERIAL] BOARD CREATED--MEMBERSHIP--  
11 TERMS--CHAIR AND VICE CHAIR--OFFICERS.--

12 A. The "small business development bank board" is  
13 created.

14 B. The board is composed of seven members. The  
15 governor and the New Mexico legislative council shall each  
16 appoint three members of the board, who shall be residents of  
17 the state with expertise in banking, lending and finances and  
18 who shall not hold other public office. No more than two of  
19 the members appointed by the governor or by the New Mexico  
20 legislative council shall be from the same political party. By  
21 majority vote, the governor, attorney general, commissioner of  
22 public lands, speaker of the house of representatives and  
23 president pro tempore of the senate shall appoint a person to  
24 serve as chair of the board for a four-year term. The chair  
25 shall have expertise in banking, lending and financial

.182509.2

underscoring material = new  
~~[bracketed material] = delete~~

1 investment and shall not hold other public office. The members  
2 of the board shall receive no compensation for their services,  
3 but they shall be reimbursed for actual and necessary expenses  
4 at the same rate and on the same basis as provided for public  
5 officers in the Per Diem and Mileage Act.

6 C. Board members shall be appointed for four-year  
7 terms. To provide for staggered terms, the members of the  
8 board initially appointed, other than the chair, shall serve  
9 staggered terms from the date of their appointment as follows:

10 (1) two members, one appointed by the governor  
11 and one appointed by the New Mexico legislative council, for  
12 four-year terms;

13 (2) two members, one appointed by the governor  
14 and one appointed by the New Mexico legislative council, for  
15 three-year terms; and

16 (3) two members, one appointed by the governor  
17 and one appointed by the New Mexico legislative council, for  
18 two-year terms.

19 D. Vacancies shall be filled by the appointing  
20 entity for the remainder of the unexpired term. Board members  
21 shall be eligible for reappointment.

22 E. The board shall annually elect one of its  
23 members as vice chair.

24 F. The board shall appoint and prescribe the duties  
25 of a president of the bank and other officers as the board

.182509.2

underscored material = new  
[bracketed material] = delete

1 deems necessary. The president and other officers of the bank  
2 shall not hold other public office. The members of the board  
3 shall not be officers or employees of the bank. The board may,  
4 for the purpose of carrying out the provisions of the Small  
5 Business Development Bank Act, employ attorneys other than and  
6 in addition to the attorney general of the state, accountants,  
7 investment officers, financial experts, loan specialists,  
8 bankers and such other advisors, consultants and agents as may  
9 be necessary in its judgment. The board shall fix the  
10 compensation of officers and employees. Officers and employees  
11 of the bank are not subject to the Personnel Act.

12 SECTION 6. [NEW MATERIAL] POWERS OF THE BOARD.--The board  
13 shall have all the powers necessary or convenient to carry out  
14 and effectuate the purposes and provisions of the Small  
15 Business Development Bank Act, including the power to:

- 16 A. sue and be sued;
- 17 B. have a seal and alter it at pleasure;
- 18 C. make and alter bylaws for its organization and  
19 internal management;
- 20 D. acquire, hold, improve, mortgage, lease and  
21 dispose of real and personal property for its public purpose;
- 22 E. make, service and administer loans for the  
23 purposes and in the manner set forth in Section 7 of the Small  
24 Business Development Bank Act;
- 25 F. subject to any agreement with a community bank

.182509.2

underscoring material = new  
~~[bracketed material] = delete~~

1 note holder or loan recipient:

2 (1) renegotiate any loan in default, provided  
3 that the bank shall not forgive any debt;

4 (2) consent to the modification of the terms  
5 of any loan and otherwise exercise all powers with respect to  
6 its loans that any private creditor may exercise under  
7 applicable law; and

8 (3) commence, prosecute and enforce a judgment  
9 in any action or proceeding to protect or enforce any right  
10 conferred upon it by law, loan agreement, contract or other  
11 agreement; and in connection with any such proceeding, bid for  
12 and purchase the property or acquire or take possession of it  
13 and, in such event, complete, administer, pay the principal of  
14 and interest on any obligations incurred in connection with the  
15 property and operate or dispose of and otherwise deal with the  
16 property in such manner as the board may deem advisable to  
17 protect its interests in the property;

18 G. make and execute contracts for the  
19 administration, servicing or collection of any loan and pay the  
20 reasonable value of services rendered to the bank pursuant to  
21 such contracts;

22 H. fix, revise from time to time, charge and  
23 collect fees and other charges in connection with the making of  
24 a loan and any other services rendered by the bank;

25 I. subject to any agreement with community bank

.182509.2

underscoring material = new  
[bracketed material] = delete

1 note holders, sell any loans at public or private sale at such  
2 prices and on such terms as the board determines;

3 J. arrange for and pay any premiums associated with  
4 guarantees or other security, liquidity or credit enhancements  
5 in connection with its notes or other obligations by the  
6 federal government or by any private insurer or other provider;

7 K. subject to any agreement with a community bank  
8 note holder, invest money of the bank not required for  
9 immediate use in any way determined to be in the best interest  
10 of the bank;

11 L. make surveys and monitor on a continuing basis  
12 the adequacy of the supply of funds available in the private  
13 banking system in the state for economic development loans;

14 M. make and execute agreements, contracts and other  
15 instruments necessary or convenient in the exercise of the  
16 powers and functions of the board under the Small Business  
17 Development Bank Act;

18 N. contract for and accept any state, federal or  
19 private gifts, grants, loans of funds or property or financial  
20 or other aid in any form, subject to the terms and conditions  
21 of the Small Business Development Bank Act;

22 O. make, alter or repeal rules addressing its  
23 operations, properties and facilities as are necessary to carry  
24 out its functions and duties in the administration of the Small  
25 Business Development Bank Act; and

.182509.2

underscored material = new  
[bracketed material] = delete

1 P. do any and all things necessary to carry out its  
2 purposes and exercise the power given and granted in the Small  
3 Business Development Bank Act; provided that the bank shall not  
4 accept or hold public or private deposits.

5 SECTION 7. [NEW MATERIAL] ECONOMIC DEVELOPMENT LOANS.--

6 A. The bank may make and contract to make loans on  
7 terms and conditions as it determines and in accordance with  
8 the provisions of this section.

9 B. All loans made by the bank shall:

10 (1) be with a New Mexico resident or a New  
11 Mexico business;

12 (2) be in the form of loan participation  
13 agreements with community banks for up to forty-nine percent of  
14 the total individual economic development project financing;

15 (3) have an interest rate equal to the rate  
16 charged by a community bank, unless a lower rate may be charged  
17 in accordance with the laws of the state;

18 (4) provide that the bank has an equal  
19 security interest with a community bank note holder;

20 (5) if the loan is for real estate, have a  
21 maximum term of twenty-five years;

22 (6) if the loan is for personal property,  
23 including operating capital, have a maximum term of ten years;  
24 and

25 (7) be for an economic development project.

underscored material = new  
[bracketed material] = delete

1 C. The bank shall require as a condition of any  
2 loan such representations and warranties as it determines to be  
3 necessary to secure the loan and carry out the purposes of this  
4 section.

5 D. The community bank entering into the loan  
6 participation agreement with the bank shall process and service  
7 the loan.

8 E. The bank shall adopt rules to implement this  
9 section.

10 SECTION 8. [NEW MATERIAL] CONFLICTS OF INTEREST--  
11 DISCLOSURE--PENALTY.--

12 A. Notwithstanding any other provision of this  
13 section, the bank shall not make any loan or otherwise give its  
14 credit to a member of the board during the member's term.  
15 Prior to taking office, a member of the board shall file a  
16 statement with the bank and the board indicating any personal  
17 interest that the member has in any loan or loan application in  
18 existence or pending at any time during the member's term on  
19 the board.

20 B. If any member, officer or employee of the bank  
21 has an interest, either direct or indirect, in any contract to  
22 which the bank is or is to be a party, the interest shall be  
23 disclosed to the board in writing and shall be set forth in the  
24 minutes of the board. The member, officer or employee having  
25 the interest shall not participate in any action by the bank or

.182509.2

underscored material = new  
[bracketed material] = delete

1 the board with respect to the contract.

2 C. The bank shall not make any loan or otherwise  
3 give its credit to any person or entity that makes a gift,  
4 grant or loan of funds to the bank during the fiscal year in  
5 which the gift, grant or loan of funds is made to the bank.  
6 Any person or entity making a gift, grant or loan of funds to  
7 the bank shall disclose the gift, grant or loan to the bank any  
8 time the person or entity has any interest in a loan or loan  
9 application pending at the bank.

10 D. Any person having a conflict of interest as  
11 defined in this section and participating in any transaction  
12 involving the conflict of interest or failing to notify the  
13 bank or the board as required by this section is guilty of a  
14 misdemeanor and shall be sentenced in accordance with the  
15 provisions of Section 31-19-1 NMSA 1978.

16 SECTION 9. [NEW MATERIAL] AUDIT--REVIEW BY STATE  
17 INVESTMENT COUNCIL.--

18 A. The state auditor shall contract with an  
19 independent certified public accounting firm for an annual  
20 audit of the bank in accordance with generally accepted  
21 government auditing standards. The auditor shall report the  
22 results of the audit to the board and to the legislature.

23 B. The state investment council shall select an  
24 independent third party to examine the bank at least once every  
25 twenty-four months and conduct any investigation of the bank

.182509.2

underscored material = new  
~~[bracketed material]~~ = delete

1 that may be necessary. The chair of the state investment  
2 council shall report the examination results, and the results  
3 of any necessary investigation, to the board and to the  
4 legislature as soon as practicable.

5 SECTION 10. [NEW MATERIAL] LIMITATION OF LIABILITY.--

6 Neither the members of the board nor any person acting on the  
7 board's behalf, while acting within the scope of the members'  
8 or person's authority, shall be subject to any personal  
9 liability for any action taken or omitted within that scope of  
10 authority.

11 SECTION 11. [NEW MATERIAL] CIVIL ACTIONS.--Any action or

12 proceeding brought against the state of New Mexico in which a  
13 question arises regarding the operations or actions of the bank  
14 or the validity of the Small Business Development Bank Act may  
15 be brought in the same manner, and is subject to the same  
16 provisions of law, as other civil actions. In such actions,  
17 the state must be designated as "the State of New Mexico, doing  
18 business as the New Mexico small business development bank".

19 SECTION 12. [NEW MATERIAL] CORPORATE EXISTENCE.--The bank

20 and its corporate existence shall continue until terminated by  
21 law, provided that no such law shall take effect so long as the  
22 bank has notes or loans outstanding unless adequate provision  
23 has been made for the satisfaction or payment of those loans or  
24 notes. Upon termination of the existence of the bank, all its  
25 rights and properties in excess of its obligations shall pass

.182509.2

underscored material = new  
[bracketed material] = delete

1 to and be vested in the state.

2 SECTION 13. [NEW MATERIAL] CONFIDENTIALITY--PROPRIETARY  
3 INFORMATION--PENALTY.--

4 A. The following records of the bank are  
5 confidential and are not subject to inspection pursuant to the  
6 Inspection of Public Records Act:

7 (1) proprietary technical information and  
8 business information of a customer, including financial and  
9 commercial information, whether obtained directly or  
10 indirectly, and including information obtained during  
11 discussions between the bank and the customer prior to the  
12 filing of a loan application;

13 (2) internal or interagency memoranda or  
14 letters that would not be available by law to a party other  
15 than in litigation with the bank;

16 (3) information contained in or related to  
17 examination, operating or condition reports prepared by, on  
18 behalf of or for the use of a state or federal agency  
19 responsible for the regulation or supervision of any bank  
20 activity; and

21 (4) any report by a bank officer or member of  
22 the board concerning personal financial statements of a  
23 customer.

24 B. It is unlawful for any employee of the bank or  
25 the board, or any former employee of the bank or the board, to

underscored material = new  
[bracketed material] = delete

1 reveal to any person other than another employee of the bank or  
2 the board any confidential information obtained by the bank or  
3 the board that is proprietary technical or business information  
4 of a customer, including financial and commercial information.

5 C. Any employee or former employee of the bank or  
6 the board who reveals to another person any information that is  
7 prohibited from disclosure in this section is guilty of a  
8 misdemeanor and shall be sentenced in accordance with the  
9 provisions of Section 31-19-1 NMSA 1978.

10 SECTION 14. A new section of the Severance Tax Bonding  
11 Act is enacted to read:

12 "[NEW MATERIAL] INVESTMENT IN THE NEW MEXICO SMALL  
13 BUSINESS DEVELOPMENT BANK.--

14 A. The severance tax permanent fund may be invested  
15 in the New Mexico small business development bank. The amount  
16 invested shall not exceed one hundred million dollars  
17 (\$100,000,000). Not more than five million dollars  
18 (\$5,000,000) of the amount authorized for investment pursuant  
19 to this subsection shall be used to establish the New Mexico  
20 small business development bank, including construction of a  
21 facility to house the bank and operating the bank. The  
22 remainder of the amount authorized for investment pursuant to  
23 this subsection shall be used to fund the loan program  
24 administered by the New Mexico small business development bank  
25 as set forth in the Small Business Development Bank Act.

.182509.2

