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SENATE BILL 15

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

Sander Rue

ENDORSED BY THE INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

AN ACT

RELATING TO PUBLIC FINANCES; CHANGING THE DEFINITION OF "NEW MEXICO PRIVATE EQUITY FUND".

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 NEW MEXICO BUSINESS INVESTMENTS.--

A. No more than nine 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 of this section, the council shall make investments in New Mexico private equity funds or New Mexico businesses whose

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1 investments or enterprises enhance the economic development
2 objectives of the state.

3 C. The state investment officer shall make
4 investments pursuant to Subsection A of this section only upon
5 approval of the council and within guidelines and policies
6 established by the council.

7 D. As used in this section:

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

14 (2) "New Mexico private equity fund" means [~~a~~
15 ~~limited partnership, limited liability company or corporation~~
16 ~~organized and operating in the United States and maintaining an~~
17 ~~office staffed by a full-time investment officer in New Mexico]~~
18 an entity that makes, manages or sources potential investments
19 in New Mexico businesses and that:

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

25 (b) holds out the prospects for capital

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1 appreciation from such investments;

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

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

15 (e) accepts investments only from
16 accredited investors as that term is defined in Section 2 of
17 the federal Securities Act of 1933, as amended (15 USCA Section
18 77(b)), and rules and regulations promulgated pursuant to that
19 section, or federally recognized Indian tribes, nations and
20 pueblos with at least five million dollars (\$5,000,000) in
21 overall investment assets.

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:

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

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

14 (c) in a New Mexico business that:
15 1) is established to perform technology transfer, research and
16 development, research commercialization, manufacturing,
17 training, marketing or public relations in any field of science
18 or technology, including but not limited to energy, security,
19 defense, aerospace, automotives, electronics,
20 telecommunications, computer and information science,
21 environmental science, biomedical science, life science,
22 physical science, materials science or nanoscience, using
23 research developed in whole or in part by a state institution
24 of higher education or a prime contractor designated as a
25 national laboratory by an act of congress that is operating a

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1 facility in the state, or an affiliated entity; and 2) has an
2 agreement to operate the business on state lands;

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

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

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

15 (b) is necessary to protect the
16 investment; and

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

19 F. The state investment officer shall make a
20 commitment to the small business investment corporation
21 pursuant to the Small Business Investment Act to invest one
22 percent of the market value of the severance tax permanent fund
23 to create new job opportunities by providing capital for land,
24 buildings or infrastructure for facilities to support new or
25 expanding businesses and to otherwise make investments to

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1 create new job opportunities to support new or expanding
2 businesses in a manner consistent with the constitution of New
3 Mexico. On July 1 of each year, the state investment officer
4 shall determine whether the invested capital in the small
5 business investment corporation is less than one percent of the
6 market value of the severance tax permanent fund. If the
7 invested capital in the small business investment corporation
8 equals less than one percent of the market value of the
9 severance tax permanent fund, further commitments shall be made
10 until the invested capital is equal to one percent of the
11 market value of the fund.

12 G. The state investment officer shall report
13 semiannually on the [~~New Mexico private equity~~] investments
14 made pursuant to this section. Annually, a report shall be
15 submitted to the legislature prior to the beginning of each
16 regular legislative session and a second report no later than
17 October 1 each year to the legislative finance committee, the
18 revenue stabilization and tax policy committee and any other
19 appropriate interim committee. Each report shall provide the
20 amounts invested in each New Mexico private equity fund, as
21 well as information about the objectives of the funds, the
22 companies in which each private equity fund is invested and how
23 each private equity investment enhances the economic
24 development objectives of the state. Each report also shall
25 provide the amounts invested in each New Mexico business."

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