SENATE BILL 3

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 2020

INTRODUCED BY

Jacob R. Candelaria and John M. Sapien and Sander Rue and
Daymon Ely and Marian Matthews

AN ACT

RELATING TO PUBLIC FINANCE; ENACTING THE SMALL BUSINESS
RECOVERY ACT OF 2020; CREATING THE SMALL BUSINESS RECOVERY LOAN
FUND; PROVIDING SMALL BUSINESS RECOVERY LOANS FOR CERTAIN
BUSINESSES; ESTABLISHING TERMS FOR SMALL BUSINESS RECOVERY
LOANS; REQUIRING REPAYMENT; PROVIDING FOR THE INVESTMENT OF THE
SEVERANCE TAX PERMANENT FUND IN CERTAIN LOANS; PROVIDING TERMS;
REQUIRING A CERTAIN AMOUNT OF THE SEVERANCE TAX PERMANENT FUND
TO BE INVESTED IN LOANS FOR LOCAL GOVERNMENTS THAT EXPERIENCE A
DECLINE IN REVENUE DUE TO THE CORONAVIRUS DISEASE 2019
PADEMIC; ALLOWING FOR AN INCREASE IN THE INVESTMENT OF THE
SEVERANCE TAX PERMANENT FUND IN NEW MEXICO PRIVATE EQUITY FUNDS
OR NEW MEXICO BUSINESSES; ESTABLISHING REPORTING REQUIREMENTS;
REPEALING LAWS 2020, CHAPTER 75, SECTION 1 TO MAKE CONFORMING
TECHNICAL CHANGES; MAKING AN APPROPRIATION; DECLARING AN
EMERGENCY.

.218018.1
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 7 of this act may be cited as the "Small Business Recovery Act of 2020".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Small Business Recovery Act of 2020:

A. "authority" means the New Mexico finance authority;

B. "average adjusted monthly business expenses" means an amount equal to the quotient of:

(1) a business's total expenses for taxable year 2019, excluding expenses deducted pursuant to Section 179 of the United States Internal Revenue Code of 1986, as that section may be amended or renumbered, and expenses for depreciation and bonus depreciation deducted pursuant to the United States Internal Revenue Code of 1986, as determined from the business's federal income tax return for taxable year 2019, less the amount of any loan obtained by the business pursuant to Section 1102 of the federal Coronavirus Aid, Relief, and Economic Security Act; and

(2) twelve;

C. "community development financial institution" means a legal entity operating within the state that is certified as a community development financial institution by
the federal community development financial institutions fund;

D. "loan servicer" means a federally insured
depository institution or community development financial
institutions that assembles and submits the small business
recovery loan documents to the authority;

E. "New Mexico resident" means an individual who is
domiciled in this state during any part of the year or an
individual who is physically present in this state for one
hundred eighty-five days or more during the taxable year;

F. "ordinary and necessary business expenses" means
all expenses, including expenses and capital expenses incurred
to operate the business in compliance with a public health
order;

G. "qualifying small business" means a business or
nonprofit corporation that:

(1) has closed or reduced operations due to
the public health order issued by the secretary of health on
March 23, 2020;

(2) had an annual gross revenue of less than
one million five hundred thousand dollars ($1,500,000) as
determined from the business's federal income tax return for
taxable year 2019;

(3) during the months of April and May 2020,
experienced one of the following:

(a) for a business entity other than a
nonprofit corporation, a decline in the business's monthly
gross receipts by more than thirty percent from the business's
monthly gross receipts for that month in 2019, as reported
monthly by the business to the taxation and revenue department;
or

   (b) for a business entity that is
organized and operated as a nonprofit corporation, a decline in
the business's monthly revenue by more than thirty percent from
the business's monthly revenue for that month in 2019, as
determined through accounting information that is provided by
the business and certified to be accurate and information
reported by the business to the federal internal revenue
service for the previous year;

(4) is classified as retail trade,
accommodation and food services, construction, administrative
and support services, health care and social assistance or
child daycare services by the most recent edition of the United
States census bureau's North American industry classification
system, is a small independent movie theater or is a tribal
entity; and

(5) is organized and operated as a nonprofit
corporation or is owned as follows:

   (a) for a sole proprietorship, one
hundred percent of the assets of the business are owned or
leased by a New Mexico resident; and
(b) for a corporation, partnership, joint venture, limited liability company, limited partnership or other business entity, at least eighty percent of the total voting power of the entity and at least eighty percent of the total value of the equity is owned by one or more New Mexico residents; and

H. "service provider" means a nonprofit or governmental organization that provides interactive, technical assistance to small businesses, including:

1. developing sustainable business practices;
2. training in marketing, administration and financial management; and
3. complying with legal requirements, licensing requirements and tax liabilities.

SECTION 3. [NEW MATERIAL] SMALL BUSINESS RECOVERY LOAN FUND--CREATED.--The "small business recovery loan fund" is created in the authority. The fund consists of appropriations, gifts, grants, deposits, transfers and donations to the fund. Money in the fund is appropriated to the authority to administer the provisions of the Small Business Recovery Act of 2020. The authority shall administer the fund. Balances remaining in the fund at the end of fiscal year 2022 shall revert to the severance tax permanent fund. The authority may expend no more than one percent of the balance of the fund for administering the Small Business Recovery Act of 2020.
SECTION 4. [NEW MATERIAL] LOANS--TERMS.--

A. The authority shall receive and review applications for small business recovery loans pursuant to the Small Business Recovery Act of 2020. The authority shall review all small business recovery loan applications in the order in which the completed applications were received and shall provide a determination to the applicant as soon as practicable. The authority shall make loans to qualifying small businesses; provided that funds are available. The authority shall adopt rules to govern the application procedures and requirements for disbursing loans under the Small Business Recovery Act of 2020, including requirements consistent with the purpose of that act for determining the eligibility of qualifying small businesses for loans; provided that the authority shall not create additional requirements for eligibility other than those provided by that act.

B. The authority may use funding made available for the Small Business Recovery Act of 2020 to contract with a loan servicer to assist in carrying out the provisions of the Small Business Recovery Act of 2020, including determining:

   (1) whether an entity meets the requirements to be considered a qualifying small business;
   (2) whether a qualifying small business is eligible for a small business recovery loan; and
   (3) the amount that the qualifying small
business is eligible to receive for a small business recovery loan.

C. The authority shall make small business recovery loans in accordance with the following:

(1) the loan amount shall be in an amount equal to two hundred percent of the qualifying small business's average adjusted monthly business expenses from the previous calendar or fiscal year; provided that the maximum loan amount shall be no greater than seventy-five thousand dollars ($75,000);

(2) the terms of the loan shall require that the loan recipient:

(a) use a minimum of eighty percent of the proceeds of the loan for ordinary and necessary business expenses, including capital expenses, other than compensation for employees who own equity in the business;

(b) provide a written certification signed by an appropriate officer of the qualifying small business that certifies that: 1) the officer understands that the business is receiving a loan under the Small Business Recovery Act of 2020 that must be repaid by the business with interest under the terms of the loan agreement; 2) all documents submitted in support of the loan application are true and accurate to the best of the officer's knowledge; 3) the officer has a reasonable basis to believe that, as of the date
of origination of the loan and receipt of the loan proceeds, the business does not expect to permanently cease business operations or file for bankruptcy; 4) prior to the issuance of the public health order issued by the secretary of health on March 23, 2020, the business was current on all obligations pursuant to the Income Tax Act, the Corporate Income and Franchise Tax Act, the Withholding Tax Act, the Gross Receipts and Compensating Tax Act and the Unemployment Compensation Law applicable to the business's operations; and 5) all loan proceeds will be used for purposes as provided in the Small Business Recovery Act of 2020, including that no more than twenty percent of the proceeds may be used as compensation for employees who own equity in the business; and

    (c) provide the authority with ongoing information relevant to the reporting requirements of the authority provided in Section 7 of the Small Business Recovery Act of 2020;

    (3) the terms of the loan shall not require that the qualifying small business provide a personal guarantee or collateral to secure the loan; and

    (4) the application for a loan must be received no later than December 31, 2020.

SECTION 5. [NEW MATERIAL] REPAYMENT.--

A. Small business recovery loans shall be made for an initial loan period of three years. The loans shall bear an
annual interest rate equal to one-half of the *Wall Street Journal* prime rate on the date the loan is made.

B. Payment of the interest accrued on a small business recovery loan shall be due in annual installments, with the first interest payment due on the first anniversary of the funding date of the loan, and with each subsequent interest payment due on each subsequent anniversary of the funding date of the loan thereafter until the loan is paid in full. Payment on the outstanding principal of a small business recovery loan may be made on the third anniversary of the funding date of the loan, or the outstanding principal and interest on the loan may be converted to a loan, at the request of the borrower and with the consent of the authority, to be paid in monthly installments over a period of three additional years.

C. Receipts from the repayment of loans made pursuant to the Small Business Recovery Act of 2020 shall be deposited in the severance tax permanent fund.

D. No provision in a small business recovery loan or the evidence of indebtedness of the loan shall include a penalty or premium for prepayment of the balance of the indebtedness.

SECTION 6. SMALL BUSINESS TECHNICAL ASSISTANCE--SERVICE PROVIDERS.--

A. A qualified small business with an annual gross revenue of five hundred thousand dollars ($500,000) or less
that applies for and receives a small business recovery loan and that is receiving technical assistance from a service provider is eligible to receive additional funding in the amount of one-half percent of the loan amount to pay the service provider for continued technical assistance during the term of the loan or until the service provider certifies to the authority that the qualified small business no longer needs the assistance of the service provider; provided that the:

(1) additional amount shall not be included in the small business recovery loan and shall not require repayment;

(2) additional amount shall be provided to the service provider; and

(3) authority shall use funding made available for the Small Business Recovery Act of 2020 to provide the service provider with the additional amount.

B. Nothing in this section shall be construed to require a small business with an annual gross revenue of five hundred thousand dollars ($500,000) or less to contract with or use the services of a service provider to meet the qualifications of a small business recovery loan.

SECTION 7. [NEW MATERIAL] REPORTS--CONFIDENTIALITY.--

A. Prior to October 1, 2021 and each October 1 for the proceeding four years, the authority shall submit a report to the legislature, the legislative finance committee, the New
Mexico finance authority oversight committee, the revenue stabilization and tax policy committee and any other appropriate legislative interim committee. The report shall provide details regarding the loans made pursuant to the Small Business Recovery Act of 2020. The report shall include:

(1) the total number of loans made pursuant to that act;
(2) the total number of loan applications;
(3) the average amount of money provided to loan applicants;
(4) the total number of loans and the amount of those loans, if any, in a delinquent status or default;
(5) the total number of loan recipients that are in the process of filing or have filed for bankruptcy;
(6) the total number of employees currently employed by a business that received a loan; and
(7) an overview of the industries and types of business entities represented by loan recipients.

B. Information obtained by the authority regarding individual loan applicants is confidential and not subject to inspection pursuant to the Inspection of Public Records Act; provided that nothing in this section shall prevent the authority from disclosing broad demographic information and information relating to the total amount of loans made and the total outstanding balance of loans made pursuant to the Small Business Recovery Act of 2020.

SECTION 8. A new section of the Severance Tax Bonding Act is enacted to read:

"[NEW MATERIAL] LOCAL GOVERNMENT EMERGENCY ECONOMIC RELIEF.--

A. Within thirty days of the effective date of this 2020 act, the state investment officer shall make a commitment to the authority to invest one percent of the average of the year-end market values of the severance tax permanent fund for the immediately preceding five calendar years for the purpose of making loans to local governments pursuant to this section; provided that investments made pursuant to this section are in compliance with the prudent investor rule set forth in the Uniform Prudent Investor Act.

B. The authority shall receive and review applications for loans from the amount committed pursuant to Subsection A of this section to a local government that can demonstrate that the local government experienced at least a ten percent decline in fiscal year 2020 operating revenue due to the economic impacts of the coronavirus disease 2019 pandemic. The authority shall adopt rules to govern the application procedures and requirements for disbursing the loans.

C. The authority shall make loans from the amount committed pursuant to Subsection A of this section in
accordance with the following:

(1) an application for a loan shall be received by the authority no later than September 30, 2020;

(2) a loan amount shall be in an amount equal to fifty percent of the local government's projected budget shortfall for fiscal year 2020, as determined by the local government division of the department of finance and administration, unless the local government requests a lesser amount; and

(3) terms of the loan shall include that:
   (a) a local government may use loan proceeds for general operating expenses and revenue replacement;
   (b) a local government shall dedicate future local option gross receipts tax revenue to secure the loan;
   (c) a loan shall bear an annual interest rate equal to two percent;
   (d) a loan shall be structured as an interest-only loan for a period of three years, at which time the local government shall begin making monthly payments on the principal and interest of any balance of the loan;
   (e) interest on a loan shall not compound until twelve months following the date the loan proceeds are made available to the local government; and
(f) a loan shall be made for a period of no more than five years.

D. Receipts from the repayment of loans made pursuant to this section shall be transferred to the severance tax permanent fund.

E. No provision in a loan or the evidence of indebtedness of a loan shall include a penalty or premium for prepayment of the balance of the indebtedness.

F. On or before October 1 of a year that a loan made pursuant to this section is outstanding, the authority shall audit the loan program and submit a report of the findings to the New Mexico finance authority oversight committee, the legislative finance committee and the office of the governor. The report shall provide details regarding the loans made pursuant to this section, including:

(1) the name of each local government that received a loan, the loan amount, the balance owed and if the loan is in a delinquent status or default; and

(2) the number of jobs saved that can be attributed to receiving the loan, with evidence of how the loan saved each job.

G. As used in this section:

(1) "authority" means the New Mexico finance authority;

(2) "local government" means a municipality or
county; and

(3) "local option gross receipts tax revenue"

means:

(a) for a municipality, revenue
distributed to the municipality pursuant to Section 7-1-6.4
NMSA 1978 and transferred to the municipality pursuant to
Section 7-1-6.12 NMSA 1978; and

(b) for a county, revenue transferred to
the county pursuant to Section 7-1-6.13 NMSA 1978."

SECTION 9. Section 7-27-5 NMSA 1978 (being Laws 1983,
Chapter 306, Section 7, as amended) is amended to read:

"7-27-5. INVESTMENT OF SEVERANCE TAX PERMANENT FUND.--

A. The severance tax permanent fund shall be
invested in separate differential rate and market rate
investment classes. "Differential rate investments" are
permitted in Sections 7-27-5.3 through 7-27-5.5, 7-27-5.13
through 7-27-5.17, 7-27-5.22, [and] 7-27-5.24 [through] and
7-27-5.26 NMSA 1978 and are intended to stimulate the economy
of New Mexico and to provide income to the severance tax
permanent fund. "Market rate investments" are investments that
are not differential rate investments and are intended to
provide income to the severance tax permanent fund. All market
rate investments and differential rate investments shall be
invested in accordance with the Uniform Prudent Investor Act
and shall be accounted for in accordance with generally
accepted accounting principles.

B. In addition to the investment classes described in Subsection A of this section, the severance tax permanent fund shall be invested in loans to provide emergency economic relief to local governments as provided by Section 8 of this 2020 act."

SECTION 10. 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. In addition to the investments required by Subsections F and G of this section, no more than [nine] eleven 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 investments or enterprises enhance the economic development objectives of the state.

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

D. As used in this section:
(1) "New Mexico business" means, in the case of a corporation or limited liability company, a business with its principal office and a majority of its full-time employees located in New Mexico or, in the case of a limited partnership, a business with its principal place of business and eighty percent of its assets located in New Mexico; and

(2) "New Mexico private equity fund" means an entity that makes, manages or sources potential investments in New Mexico businesses and that:

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

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

   (c) has at least one full-time manager with at least three years of professional experience in assessing the growth prospects of businesses or evaluating business plans;

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

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

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

    (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;

        (b) in a New Mexico aerospace business
that has 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; or

    (c) in a New Mexico business that: 1)

is established to perform technology transfer, research and
development, research commercialization, manufacturing,
training, marketing or public relations in any field of science
or technology, including but not limited to energy, security,
defense, aerospace, automotives, electronics,
telecommunications, computer and information science,
environmental science, biomedical science, life science,
physical science, materials science or nanoscience, using
research developed in whole or in part by a state institution
of higher education or a prime contractor designated as a
national laboratory by an act of congress that is operating a
facility in the state, or an affiliated entity; and 2) has an
agreement to operate the business on state lands;

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

F. In addition to the investments required by
Subsections A and G of this section, the state investment
officer shall make a commitment to the small business
investment corporation pursuant to the Small Business
Investment Act to invest two percent of the market value of the
severance tax permanent fund to create new job opportunities by
providing capital for land, buildings or infrastructure for
facilities to support new or expanding businesses and to
otherwise make investments to create new job opportunities to
support new or expanding businesses in a manner consistent with
the constitution of New Mexico. On July 1 of each year, the
state investment officer shall determine whether the invested
capital in the small business investment corporation is less
than two percent of the market value of the severance tax
permanent fund. If the invested capital in the small business
investment corporation equals less than two percent of the
market value of the severance tax permanent fund, further
commitments shall be made until the invested capital is equal
to two percent of the market value of the fund.
G. In addition to the investments provided for in Subsections A and F of this section, the state investment officer shall make a commitment to the New Mexico finance authority to invest the lesser of four hundred million dollars ($400,000,000) or ten percent of the market value of the severance tax permanent fund in investments made pursuant to the Small Business Recovery Act of 2020; provided that:

(1) investments made pursuant to and in compliance with the Small Business Recovery Act of 2020 shall be deemed to be in compliance with the prudent investor rule set forth in the Uniform Prudent Investor Act; and

(2) the New Mexico finance authority shall not be held liable for investments made pursuant to this subsection that do not provide a return on investment that is comparable to other differential rate investments made pursuant to the Severance Tax Bonding Act.

H. The state investment officer shall report semiannually on the investments made pursuant to this section. Annually, a report shall be submitted to the legislature prior to the beginning of each regular legislative session and a second report no later than October 1 each year to the legislative finance committee, the revenue stabilization and tax policy committee and any other appropriate interim committee. Each report shall provide the amounts invested in each New Mexico private equity fund, as well as information
about the objectives of the funds, the companies in which each private equity fund is invested and how each private equity investment enhances the economic development objectives of the state. Each report also shall provide the amounts invested in each New Mexico business."

SECTION 11. REPEAL.--Laws 2020, Chapter 75, Section 1 is repealed.

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