

SENATE FINANCE COMMITTEE SUBSTITUTE FOR  
SENATE BILL 3

**55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

AN ACT

RELATING TO ECONOMIC RECOVERY; CHANGING THE NAME OF THE SMALL BUSINESS RECOVERY ACT OF 2020 TO THE SMALL BUSINESS RECOVERY AND STIMULUS ACT; CHANGING CERTAIN DEFINITIONS WITHIN THE SMALL BUSINESS RECOVERY AND STIMULUS ACT; EXTENDING THE DEADLINE TO APPLY FOR A SMALL BUSINESS RECOVERY LOAN; DELAYING THE REVERSION OF THE SMALL BUSINESS RECOVERY LOAN FUND; CHANGING THE TERMS OF SMALL BUSINESS RECOVERY LOANS; PERMITTING THE REQUIREMENT OF A PERSONAL GUARANTEE OR COLLATERAL FOR CERTAIN LOANS; ALLOWING A RECIPIENT OF A PREVIOUS SMALL BUSINESS RECOVERY LOAN TO REFINANCE THE LOAN SUBJECT TO THE TERMS OF THIS ACT; INCREASING THE AMOUNT OF THE SEVERANCE TAX PERMANENT FUND INVESTED PURSUANT TO THE SMALL BUSINESS RECOVERY AND STIMULUS ACT; CLARIFYING CONFIDENTIALITY PROVISIONS; REPEALING SECTION 6-32-6 NMSA 1978 (BEING LAWS 2020 (1ST S.S.), CHAPTER 6, SECTION 6); DECLARING AN EMERGENCY.

.219463.5

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

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

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

SECTION 1. Section 6-32-1 NMSA 1978 (being Laws 2020 (1st S.S.), Chapter 6, Section 1) is amended to read:

"6-32-1. SHORT TITLE.--~~[Sections 1 through 7 of this act]~~ Chapter 6, Article 32 NMSA 1978 may be cited as the "Small Business Recovery and Stimulus Act ~~[of 2020]~~"."

SECTION 2. Section 6-32-2 NMSA 1978 (being Laws 2020 (1st S.S.), Chapter 6, Section 2) is amended to read:

"6-32-2. DEFINITIONS.--As used in the Small Business Recovery and Stimulus 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~~

1                   ~~(2) twelve;~~

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

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

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

14                  C. "non-employer business" means a qualifying small  
 15 business that has no paid employees;

16                  ~~[F.]~~ D. "ordinary and necessary business expenses"  
 17 means all expenses, including expenses and capital expenses  
 18 incurred to operate the business in compliance with a public  
 19 health order;

20                  ~~[G.]~~ E. "qualifying small business" means a  
 21 business or nonprofit corporation that:

22                         (1) ~~[has closed or reduced operations]~~ can  
 23 demonstrate, as determined by the authority, that it has  
 24 sustained a substantial decline in gross revenue or a  
 25 substantial disruption to its operations due to the public

.219463.5

1 health ~~[order]~~ orders issued by the secretary of health ~~[on~~  
2 ~~March 23, 2020]~~ and related to the coronavirus disease 2019  
3 public health emergency;

4 (2) had an annual ~~[gross]~~ net revenue of less  
5 than five million dollars (\$5,000,000) as determined ~~[from the~~  
6 ~~business's federal income tax return for taxable year 2019;~~

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

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

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

23 ~~[(4)]~~ (3) is organized and operated as a  
24 nonprofit corporation or is owned as follows:

25 (a) for a sole proprietorship, one

1 hundred percent of the assets of the business are owned or  
2 leased by a New Mexico resident; and

3 (b) for a corporation, partnership,  
4 joint venture, limited liability company, limited partnership  
5 or other business entity, at least ~~[eighty]~~ fifty-one percent  
6 of the total voting power of the entity and at least ~~[eighty]~~  
7 fifty-one percent of the total value of the equity is owned by  
8 one or more New Mexico residents or the business entity  
9 maintains a physical business location within the state and has  
10 employed at least ten full-time New Mexico resident employees  
11 at any time since January 1, 2019; and

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

- 15 ~~(1) developing sustainable business practices;~~  
16 ~~(2) training in marketing, administration and~~  
17 ~~financial management; and~~  
18 ~~(3) complying with legal requirements,~~  
19 ~~licensing requirements and tax liabilities; and~~

20 ~~F.] F. "nonprofit corporation" means an [entity~~  
21 ~~organized pursuant to Section 501(c)(3) or 501(c)(6) of the~~  
22 ~~Internal Revenue Service Code] organization that has been~~  
23 ~~granted exemption from the federal income tax by the United~~  
24 ~~States commissioner of internal revenue as an organization~~  
25 ~~described in Section 501(c)(3), 501(c)(6), 501(c)(8),~~

.219463.5

1 501(c)(19) or 501(c)(23) of the United States Internal Revenue  
2 Code of 1986 and subject to the provisions of the Nonprofit  
3 Corporation Act."

4 SECTION 3. Section 6-32-3 NMSA 1978 (being Laws 2020 (1st  
5 S.S.), Chapter 6, Section 3) is amended to read:

6 "6-32-3. SMALL BUSINESS RECOVERY LOAN FUND--CREATED--  
7 FUNDING SCHEDULE.--

8 A. The "small business recovery loan fund" is  
9 created in the authority. The fund consists of appropriations,  
10 gifts, grants, deposits, transfers and donations to the fund.  
11 Money in the fund is appropriated to the authority to  
12 administer the provisions of the Small Business Recovery and  
13 Stimulus Act [of 2020]. The authority shall administer the  
14 fund. Balances remaining in the fund [~~at the end of fiscal~~  
15 ~~year 2022]~~ as of December 31, 2022 and not identified by the  
16 authority as necessary to administer the Small Business  
17 Recovery and Stimulus Act over the life of the loans provided  
18 pursuant to that act shall revert to the severance tax  
19 permanent fund. The authority may expend no more than [~~one~~  
20 ~~two~~] percent of the [~~balance of the fund~~] state investment  
21 council's commitment pursuant to Section 7-27-5.15 NMSA 1978  
22 for administering the Small Business Recovery and Stimulus Act  
23 [~~of 2020~~].

24 B. Upon the effective date of this [~~2020~~] 2021 act,  
25 the authority and the state investment council shall coordinate

.219463.5

1 to develop a funding schedule to ensure that sufficient  
 2 funding, as provided for in Section [~~10 of this 2020 act~~]  
 3 7-27-5.15 NMSA 1978, is made available to the authority to  
 4 carry out the provisions of the Small Business Recovery and  
 5 Stimulus Act [~~of 2020~~]."

6 SECTION 4. Section 6-32-4 NMSA 1978 (being Laws 2020 (1st  
 7 S.S.), Chapter 6, Section 4) is amended to read:

8 "6-32-4. LOANS--TERMS.--

9 A. The authority shall receive and review  
 10 applications for small business recovery loans pursuant to the  
 11 Small Business Recovery and Stimulus Act. [~~of 2020. The~~  
 12 ~~authority shall review all small business recovery loan~~  
 13 ~~applications in the order in which the completed applications~~  
 14 ~~were received and shall provide a determination to the~~  
 15 ~~applicant as soon as practicable]~~ The authority may designate  
 16 one or more application periods and shall review small business  
 17 recovery loan applications received in each application period  
 18 in the order in which the completed applications were received  
 19 and shall provide a determination to the applicant within a  
 20 reasonable time period after review. The authority shall make  
 21 loans to qualifying small businesses; provided that funds are  
 22 available and the qualifying small business [~~meets the~~  
 23 ~~requisite creditworthiness~~] satisfies credit and identification  
 24 criteria, as determined by the authority. The authority shall  
 25 adopt rules to govern the application procedures and

.219463.5

1 requirements for disbursing loans under the Small Business  
2 Recovery and Stimulus Act [~~of 2020~~], including requirements  
3 consistent with the purpose of that act for determining the  
4 eligibility of qualifying small businesses for loans; provided  
5 that the authority [~~shall not create additional requirements~~  
6 ~~for eligibility other than those provided by that act~~] may  
7 issue rules to permit a business that does not have a record of  
8 actual losses, but can otherwise satisfy the requirements of  
9 the Small Business Recovery and Stimulus Act, to apply for a  
10 small business recovery loan.

11 B. The authority shall evaluate [~~the~~  
12 ~~creditworthiness of an applicant~~] an application based on  
13 information received from the applicant [~~which may include an~~  
14 ~~independent credit reporting agency report when available.~~

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

19 (1) ~~whether an entity meets the requirements~~  
20 ~~to be considered a qualifying small business;~~

21 (2) ~~whether a qualifying small business is~~  
22 ~~eligible for a small business recovery loan; and~~

23 (3) ~~the amount that the qualifying small~~  
24 ~~business is eligible to receive for a small business recovery~~  
25 ~~loan] as well as third-party credit and identification reports.~~



1           ~~[D.]~~ C. The authority shall make small business  
2 recovery loans in accordance with the following:

3                   (1) the loan amount shall be in an amount  
4 ~~[equal to two]~~ not to exceed three hundred percent of the  
5 qualifying small business's average ~~[adjusted]~~ monthly business  
6 expenses ~~[from the previous calendar or fiscal year]~~ as  
7 determined by the authority; provided that the maximum loan  
8 amount shall be no greater than ~~[seventy-five thousand dollars~~  
9 ~~(\$75,000)]~~ one hundred fifty thousand dollars (\$150,000);

10                   (2) the terms of the loan shall require that  
11 ~~[the loan recipient]~~:

12                           (a) for a loan recipient that is not a  
13 non-employer business, the recipient shall use a minimum of  
14 eighty percent of the proceeds of the loan for: 1) ordinary  
15 and necessary business expenses, including capital expenses,  
16 other than compensation for [employees] an individual who [own]  
17 owns equity in the business; 2) making adaptations or  
18 improvements to assets, including real property, that are  
19 necessary due to the coronavirus disease 2019 public health  
20 emergency to protect the public health; and 3) purchasing or  
21 improving any assets for the purpose of developing and growing  
22 the qualifying small business's e-commerce production and sales  
23 capacity;

24                           (b) for a loan recipient that is a non-  
25 employer business, the recipient shall use a minimum of fifty

.219463.5

1 percent of the proceeds of the loan for: 1) ordinary and  
2 necessary business expenses, including capital expenses, other  
3 than compensation for an individual who owns equity in the  
4 business; 2) making adaptations or improvements to assets,  
5 including real property, that are necessary due to the  
6 coronavirus disease 2019 public health emergency to protect the  
7 public health; and 3) purchasing or improving any assets for  
8 the purpose of developing and growing the qualifying small  
9 business's e-commerce production and sales capacity;

10 ~~[(b)]~~ (c) the loan recipient provide a  
11 written certification signed by an appropriate officer of the  
12 qualifying small business that certifies that: 1) the officer  
13 understands that the business is receiving a loan under the  
14 Small Business Recovery and Stimulus Act [~~of 2020~~] that must be  
15 repaid by the business with interest under the terms of the  
16 loan agreement; 2) all documents submitted in support of the  
17 loan application and all statements and certifications made in  
18 the loan application are true and accurate to the best of the  
19 officer's knowledge; ~~[3) the officer has a reasonable basis to~~  
20 believe that, as of the date of origination of the loan and  
21 receipt of the loan proceeds, the business does not expect to  
22 permanently cease business operations or file for bankruptcy;  
23 ~~4)]~~ 3) prior to the issuance of the public health order issued  
24 by the secretary of health on March 23, 2020, the business was  
25 current on all obligations pursuant to the Income Tax Act, the

.219463.5

1 Corporate Income and Franchise Tax Act, the Withholding Tax  
 2 Act, the Gross Receipts and Compensating Tax Act and the  
 3 Unemployment Compensation Law applicable to the business's  
 4 operations; and ~~[5]~~ 4) all loan proceeds will be used for  
 5 purposes as provided in the Small Business Recovery and  
 6 Stimulus Act ~~[of 2020]~~, including that no more than twenty  
 7 percent of the proceeds may be used as compensation for  
 8 employees who own equity in the business; and

9 ~~[(e)]~~ (d) the loan recipient provide the  
 10 authority with ongoing information relevant to the reporting  
 11 requirements of the authority provided in Section ~~[7 of the~~  
 12 ~~Small Business Recovery Act of 2020]~~ 6-32-7 NMSA 1978;

13 (3) the terms of the loan shall not require  
 14 that the qualifying small business provide a personal guarantee  
 15 or collateral to secure ~~[the]~~ a loan in the amount of  
 16 seventy-five thousand dollars (\$75,000) or less. For a loan in  
 17 an amount greater than seventy-five thousand dollars (\$75,000),  
 18 the authority may require a personal guarantee or collateral to  
 19 secure the amount of the loan greater than seventy-five  
 20 thousand dollars (\$75,000); provided that the authority shall  
 21 define specific guidelines related to personal guarantees or  
 22 collateral; and

23 (4) the application for a loan must be  
 24 received no later than ~~[December 31, 2020]~~ May 31, 2022.

25 ~~[E.]~~ D. The authority may exercise any power

.219463.5

1 provided to the authority in the New Mexico Finance Authority  
2 Act to assist in the administration of [~~this~~] the Small  
3 Business Recovery and Stimulus Act; provided that the power is  
4 consistent with the provisions of [~~this~~] that act."

5 SECTION 5. Section 6-32-5 NMSA 1978 (being Laws 2020 (1st  
6 S.S.), Chapter 6, Section 5) is amended to read:

7 "6-32-5. REPAYMENT.--

8 A. Small business recovery loans shall be made for  
9 [~~an initial loan period of three~~] loan periods not to exceed  
10 ten years, as determined by the authority. The loans shall  
11 bear an annual interest rate equal to one-half of the *Wall*  
12 *Street Journal* prime rate on the date the loan is made;  
13 provided that no interest shall accrue during the first year of  
14 the loan.

15 B. [~~Payment of the interest accrued on a small~~  
16 ~~business recovery loan shall be due in annual installments with~~  
17 ~~the first interest payment due on the first anniversary of the~~  
18 ~~funding date of the loan, and with each subsequent interest~~  
19 ~~payment due on each subsequent anniversary of the funding date~~  
20 ~~of the loan thereafter until the loan is paid in full. Payment~~  
21 ~~on the outstanding principal of a small business recovery loan~~  
22 ~~may be made on the third anniversary of the funding date of the~~  
23 ~~loan, or the outstanding principal and interest on the loan may~~  
24 ~~be converted to a loan, at the request of the borrower and with~~  
25 ~~the consent of the authority, to be paid in monthly~~

.219463.5

1 ~~installments over a period of three additional years]~~ Interest  
 2 shall begin to accrue on a small business recovery loan on the  
 3 first anniversary of the funding date of the loan. Thereafter,  
 4 for the next two years, the authority shall require interest-  
 5 only payments on a schedule determined by the authority.  
 6 Beginning on the third anniversary of the funding date of the  
 7 loan, payment on the outstanding principal and interest on the  
 8 loan shall be due on a schedule determined by the authority for  
 9 the remainder of the loan period.

10 C. Receipts from the repayment of principal or  
 11 interest accrued on the loans made pursuant to the Small  
 12 Business Recovery and Stimulus Act [~~of 2020~~] shall be  
 13 transferred from the authority to the state investment council  
 14 and deposited in the severance tax permanent fund.

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

19 SECTION 6. Section 6-32-7 NMSA 1978 (being Laws 2020 (1st  
 20 S.S.), Chapter 6, Section 7) is amended to read:

21 "6-32-7. REPORTS--CONFIDENTIALITY.--

22 A. Prior to October 1, 2021 and each October 1 for  
 23 the proceeding four years, the authority shall submit a report  
 24 to the legislature, the legislative finance committee, the New  
 25 Mexico finance authority oversight committee, the revenue

.219463.5

1 stabilization and tax policy committee and any other  
2 appropriate legislative interim committee. The report shall  
3 provide details regarding the loans made pursuant to the Small  
4 Business Recovery and Stimulus Act [~~of 2020~~]. The report shall  
5 include:

6 (1) the total number of loans made pursuant to  
7 that act;

8 (2) the total number of loan applications;

9 (3) the average amount of money provided to  
10 loan applicants;

11 (4) the total number of loans and the amount  
12 of those loans, if any, in a delinquent status or default;

13 (5) the total number of loan recipients that  
14 are in the process of filing or have filed for bankruptcy;

15 (6) the total number of employees currently  
16 employed by a business that received a loan; and

17 (7) an overview of the industries and types of  
18 business entities represented by loan recipients.

19 B. Information obtained by the authority regarding  
20 individual loan applicants, including information used to  
21 analyze an application, is confidential and not subject to  
22 inspection pursuant to the Inspection of Public Records Act;  
23 provided that nothing in this section shall prevent the  
24 authority from disclosing broad demographic information and  
25 information relating to the total amount of loans made, the

1 total outstanding balance of loans made pursuant to the Small  
2 Business Recovery and Stimulus Act [~~of 2020~~] and the names of  
3 the loan recipients."

4 SECTION 7. Section 7-27-5.15 NMSA 1978 (being Laws 1990,  
5 Chapter 126, Section 5, as amended) is amended to read:

6 "7-27-5.15. NEW MEXICO PRIVATE EQUITY FUNDS AND NEW  
7 MEXICO BUSINESS INVESTMENTS.--

8 A. In addition to the investments required by  
9 Subsections F and G of this section, no more than eleven  
10 percent of the market value of the severance tax permanent fund  
11 may be invested in New Mexico private equity funds or New  
12 Mexico businesses under this section.

13 B. In making investments pursuant to Subsection A  
14 of this section, the council shall make investments in New  
15 Mexico private equity funds or New Mexico businesses whose  
16 investments or enterprises enhance the economic development  
17 objectives of the state.

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

22 D. As used in this section:

23 (1) "New Mexico business" means, in the case  
24 of a corporation or limited liability company, a business with  
25 its principal office and a majority of its full-time employees

.219463.5

1 located in New Mexico or, in the case of a limited partnership,  
2 a business with its principal place of business and eighty  
3 percent of its assets located in New Mexico; and

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

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

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

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

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

25 (e) accepts investments only from



1 accredited investors as that term is defined in Section 2 of  
2 the federal Securities Act of 1933, as amended (15 USCA Section  
3 77(b)), and rules and regulations promulgated pursuant to that  
4 section, or federally recognized Indian tribes, nations and  
5 pueblos with at least five million dollars (\$5,000,000) in  
6 overall investment assets.

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

12 (1) the investments are made:

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

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

24 (c) in a New Mexico business that: 1)  
25 is established to perform technology transfer, research and

.219463.5

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

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

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

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

25 (b) is necessary to protect the

1 investment; and

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

4 F. In addition to the investments required by  
5 Subsections A and G of this section, the state investment  
6 officer shall make a commitment to the small business  
7 investment corporation pursuant to the Small Business  
8 Investment Act to invest two percent of the market value of the  
9 severance tax permanent fund to create new job opportunities by  
10 providing capital for land, buildings or infrastructure for  
11 facilities to support new or expanding businesses and to  
12 otherwise make investments to create new job opportunities to  
13 support new or expanding businesses in a manner consistent with  
14 the constitution of New Mexico. On July 1 of each year, the  
15 state investment officer shall determine whether the invested  
16 capital in the small business investment corporation is less  
17 than two percent of the market value of the severance tax  
18 permanent fund. If the invested capital in the small business  
19 investment corporation equals less than two percent of the  
20 market value of the severance tax permanent fund, further  
21 commitments shall be made until the invested capital is equal  
22 to two percent of the market value of the fund.

23 G. In addition to the investments provided for in  
24 Subsections A and F of this section, the state investment  
25 officer shall make a commitment to the New Mexico finance

.219463.5

1 authority to invest [~~the lesser of four hundred million dollars~~  
2 ~~(\$400,000,000) or ten percent of the market value]~~ five hundred  
3 million dollars (\$500,000,000) of the severance tax permanent  
4 fund in investments made pursuant to the Small Business  
5 Recovery and Stimulus Act [~~of 2020~~]; provided that:

6 (1) investments made pursuant to and in  
7 compliance with the Small Business Recovery and Stimulus Act  
8 [~~of 2020~~] shall be deemed to be in compliance with the prudent  
9 investor rule set forth in the Uniform Prudent Investor Act;  
10 and

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

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

1 private equity fund is invested and how each private equity  
 2 investment enhances the economic development objectives of the  
 3 state. Each report also shall provide the amounts invested in  
 4 each New Mexico business."

5 SECTION 8. TEMPORARY PROVISION--REFINANCING OF PREVIOUS  
 6 LOANS.--For any small business recovery loan provided pursuant  
 7 to the New Mexico Small Business Recovery Act of 2020 made  
 8 prior to the effective date of this act, the New Mexico finance  
 9 authority shall permit the recipient of that loan to refinance  
 10 the loan subject to terms consistent with this 2021 act.

11 SECTION 9. REPEAL.--Section 6-32-6 NMSA 1978 (being Laws  
 12 2020 (1st S.S.), Chapter 6, Section 6) is repealed.

13 SECTION 10. EMERGENCY.--It is necessary for the public  
 14 peace, health and safety that this act take effect immediately.

15 - 21 -  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25