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SENATE BILL 109

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

INTRODUCED BY

Carrie Hamblen

FOR THE ECONOMIC AND RURAL DEVELOPMENT AND POLICY COMMITTEE

AN ACT

RELATING TO PUBLIC FINANCE; ENACTING THE CATASTROPHIC BUSINESS RELIEF ACT; CREATING THE CATASTROPHIC BUSINESS RELIEF LOAN FUND; PROVIDING CATASTROPHIC BUSINESS RELIEF LOANS FOR CERTAIN BUSINESSES; ESTABLISHING TERMS FOR CATASTROPHIC BUSINESS RELIEF LOANS; REQUIRING REPAYMENT; ESTABLISHING REPORTING REQUIREMENTS; MAKING APPROPRIATIONS.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Catastrophic Business Relief Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Catastrophic Business Relief Act:

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

B. "average adjusted monthly business expenses"

1 means an amount equal to the quotient of:

2 (1) a business's total expenses for the most
3 recent taxable year, excluding expenses deducted pursuant to
4 Section 179 of the United States Internal Revenue Code of 1986,
5 as that section may be amended or renumbered, and expenses for
6 depreciation and bonus depreciation deducted pursuant to the
7 United States Internal Revenue Code of 1986, as determined from
8 the business's federal income tax return for the most recent
9 taxable year; and

10 (2) twelve;

11 C. "catastrophic incident" means a sudden and
12 devastating event that causes significant harm or damage to a
13 business or its assets and that threatens the survival of the
14 business and includes operational disruptions, loss of data,
15 financial losses and equipment or infrastructure loss or
16 destruction caused by events that include public health
17 epidemics such as the coronavirus disease 2019 pandemic,
18 natural disasters, such as floods, earthquakes and tornadoes,
19 and human-made events, such as fires, explosions, acts of
20 terrorism, cyber attacks or technological failures;

21 D. "community development financial institution"
22 means a legal entity operating within the state that is
23 certified as a community development financial institution by
24 the federal community development financial institutions fund;

25 E. "loan servicer" means a federally insured

1 depository institution or community development financial
2 institution that assembles and submits the business relief loan
3 documents to the authority;

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

8 G. "nonprofit corporation" means an entity
9 organized pursuant to Section 501(c)(3) or 501(c)(6) of the
10 Internal Revenue Code of 1986;

11 H. "qualifying business" means a business or
12 nonprofit corporation that:

13 (1) has experienced a catastrophic incident;
14 and

15 (2) is owned as follows:

16 (a) for a sole proprietorship, one
17 hundred percent of the assets of the business are owned or
18 leased by a New Mexico resident; and

19 (b) for a corporation, partnership,
20 joint venture, limited liability company, limited partnership,
21 nonprofit corporation or other business entity, at least eighty
22 percent of the total voting power of the entity and at least
23 eighty percent of the total value of the equity is owned by one
24 or more New Mexico residents and the headquarters and principal
25 place of business are located in New Mexico; and

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1 I. "service provider" means a nonprofit or
2 governmental organization that provides interactive, technical
3 assistance to businesses, including:

- 4 (1) developing sustainable business practices;
- 5 (2) training in marketing, administration and
6 financial management; and
- 7 (3) complying with legal requirements,
8 licensing requirements and tax liabilities.

9 SECTION 3. [NEW MATERIAL] CATASTROPHIC BUSINESS RELIEF
10 LOAN FUND--CREATED.--

11 A. The "catastrophic business relief loan fund" is
12 created as a nonreverting fund in the authority. The fund
13 consists of distributions, appropriations, gifts, grants,
14 deposits, transfers, donations, income from investment of the
15 fund and any other money distributed or otherwise allocated to
16 the fund. The authority shall administer the fund, and money
17 in the fund is appropriated to the authority to administer the
18 provisions of the Catastrophic Business Relief Act.

19 B. The state investment officer, subject to the
20 approval of the state investment council, shall invest money in
21 the catastrophic business relief loan fund:

- 22 (1) in accordance with the prudent investor
23 rule set forth in the Uniform Prudent Investor Act; and
- 24 (2) in consultation with the state treasurer.

25 C. The state investment officer shall report

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1 quarterly to the legislative finance committee and the state
2 investment council on the investments made pursuant to this
3 section. Annually, a report shall be submitted no later than
4 November 1 of each year to the legislative finance committee,
5 the revenue stabilization and tax policy committee and any
6 other appropriate interim committees.

7 SECTION 4. [NEW MATERIAL] LOANS--TERMS.--

8 A. The authority shall receive and review
9 applications for catastrophic business relief loans pursuant to
10 the Catastrophic Business Relief Act. The authority shall
11 review all completed applications in the order in which they
12 were received and shall provide a determination to the
13 applicant within five business days. The authority shall make
14 loans to qualifying businesses; provided that funds are
15 available, prudent lending practices are followed and, as
16 determined by the authority, the qualifying business meets the
17 requisite creditworthiness. The authority shall adopt rules to
18 govern the application procedures and requirements for
19 disbursing loans under the Catastrophic Business Relief Act,
20 including requirements consistent with the purpose of that act,
21 for determining the eligibility of qualifying businesses for
22 catastrophic business relief loans.

23 B. The authority shall evaluate the
24 creditworthiness of an applicant based on information received
25 from the applicant, which may include an independent credit

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1 reporting agency report when available.

2 C. The authority may use funding made available for
3 the purposes of the Catastrophic Business Relief Act to
4 contract with a loan servicer to assist in carrying out the
5 provisions of the Catastrophic Business Relief Act, including
6 determining:

7 (1) whether an entity meets the requirements
8 to be considered a qualifying business;

9 (2) whether a qualifying business is eligible
10 for a catastrophic business relief loan; and

11 (3) the amount that the qualifying business is
12 eligible to receive for a catastrophic business relief loan.

13 D. The authority shall make catastrophic business
14 relief loans in accordance with the following:

15 (1) the loan amount shall be in an amount up
16 to two hundred percent of the qualifying business's average
17 adjusted monthly business expenses from the previous calendar
18 or fiscal year; provided that the maximum loan amount shall be
19 no greater than twenty-five thousand dollars (\$25,000);

20 (2) prudent lending practices shall be
21 followed; and

22 (3) the terms of the loan shall require that
23 the loan recipient:

24 (a) use a minimum of eighty percent of
25 the proceeds of the loan to recover from the catastrophic

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1 incident or for ordinary and necessary business expenses,
2 including capital expenses, other than compensation for
3 employees who own equity in the business;

4 (b) provide a written certification
5 signed by an appropriate officer of the qualifying business
6 that certifies that: 1) the officer understands that the
7 business is receiving a loan under the Catastrophic Business
8 Relief Act that must be repaid by the business with interest
9 under the terms of the loan agreement; 2) all documents
10 submitted in support of the loan application are true and
11 accurate to the best of the officer's knowledge; 3) the officer
12 has a reasonable basis to believe that, as of the date of
13 origination of the loan and receipt of the loan proceeds, the
14 business does not expect to permanently cease business
15 operations or file for bankruptcy; 4) prior to the catastrophic
16 incident, the business was current on all obligations pursuant
17 to the Income Tax Act, the Corporate Income and Franchise Tax
18 Act, the Withholding Tax Act, the Gross Receipts and
19 Compensating Tax Act and the Unemployment Compensation Law
20 applicable to the business's operations; and 5) all loan
21 proceeds will be used for purposes as provided in the
22 Catastrophic Business Relief Act, including that no more than
23 twenty percent of the proceeds may be used as compensation for
24 employees who own equity in the business;

25 (c) provide the authority with ongoing

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1 information relevant to the reporting requirements of the
2 authority provided in Section 7 of the Catastrophic Business
3 Relief Act; and

4 (d) provide specific guidelines related
5 to personal guarantees or collateral, as determined by the
6 authority.

7 E. The authority may exercise any power provided to
8 the authority in the New Mexico Finance Authority Act to assist
9 in the administration of this; provided that the power is
10 consistent with the provisions of the Catastrophic Business
11 Relief Act.

12 SECTION 5. [NEW MATERIAL] LOAN REPAYMENT.--

13 A. Catastrophic business relief loans shall be made
14 for an initial loan period of three years. The loans shall
15 bear an annual interest rate of one percent.

16 B. Payment of the interest accrued on a
17 catastrophic business relief loan shall be due in annual
18 installments, with the first interest payment due on the first
19 anniversary of the funding date of the loan, and with each
20 subsequent interest payment due on each subsequent anniversary
21 of the funding date of the loan thereafter until the loan is
22 paid in full. Payment on the outstanding principal of a
23 catastrophic business relief loan may be made on the third
24 anniversary of the funding date of the loan, or the outstanding
25 principal and interest on the loan may be converted to a loan,

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1 at the request of the borrower and with the consent of the
2 authority, to be paid in monthly installments over a period of
3 three additional years.

4 C. Receipts from the repayment of principal or
5 interest accrued on the loans made pursuant to the Catastrophic
6 Business Relief Act shall be deposited in the catastrophic
7 business relief loan fund.

8 D. No provision in a catastrophic business relief
9 loan or the evidence of indebtedness of the loan shall include
10 a penalty or premium for prepayment of the balance of the
11 indebtedness.

12 SECTION 6. [NEW MATERIAL] SMALL BUSINESS TECHNICAL
13 ASSISTANCE--SERVICE PROVIDERS.--

14 A. A qualified business with an annual gross
15 revenue of five hundred thousand dollars (\$500,000) or less
16 that applies for and receives a catastrophic business relief
17 loan and that is receiving technical assistance from a service
18 provider is eligible to receive additional funding in the
19 amount of one-half percent of the loan amount to pay the
20 service provider for continued technical assistance during the
21 term of the loan or until the service provider certifies to the
22 authority that the qualified business no longer needs the
23 assistance of the service provider; provided that the authority
24 shall use funding made available pursuant to the Catastrophic
25 Business Relief Act to provide the service provider with the

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1 additional amount, and the additional amount shall require
2 repayment from the qualified business.

3 B. Nothing in this section shall be construed to
4 require a qualified business with an annual gross revenue of
5 five hundred thousand dollars (\$500,000) or less to contract
6 with or use the services of a service provider to meet the
7 qualifications of a catastrophic business relief loan.

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

9 A. Prior to October 1, 2024 and each October 1 for
10 the proceeding four years, the authority shall submit a report
11 to the legislature, the legislative finance committee, the New
12 Mexico finance authority oversight committee, the revenue
13 stabilization and tax policy committee and any other
14 appropriate legislative interim committee. The report shall
15 provide details regarding the loans made pursuant to the
16 Catastrophic Business Relief Act. The report shall include:

17 (1) the number of loans made pursuant to that
18 act;

19 (2) the number of loan applications;

20 (3) the average amount provided to loan
21 applicants;

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

24 (5) the number of loan recipients that are in
25 the process of filing or have filed for bankruptcy;

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1 (6) the number of employees currently employed
2 by a qualifying business that received a loan; and

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

5 B. Information obtained by the authority regarding
6 individual loan applicants is confidential and not subject to
7 inspection pursuant to the Inspection of Public Records Act;
8 provided that nothing in this section shall prevent the
9 authority from disclosing broad demographic information and
10 information relating to the total amount of loans made and the
11 total outstanding balance of loans made pursuant to the
12 Catastrophic Business Relief Act and the names of the loan
13 recipients.

14 SECTION 8. APPROPRIATIONS.--

15 A. Twenty-five million dollars (\$25,000,000) is
16 appropriated from the general fund to the catastrophic business
17 relief loan fund for expenditure in fiscal year 2025 and
18 subsequent fiscal years for the purposes of the Catastrophic
19 Business Relief Act. Any unexpended or unencumbered balance
20 remaining at the end of a fiscal year shall not revert to the
21 general fund.

22 B. Two hundred fifty thousand dollars (\$250,000)
23 is appropriated from the general fund to the New Mexico finance
24 authority for expenditure in fiscal year 2025 and subsequent
25 fiscal years to:

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1 (1) administer the provisions of the
2 Catastrophic Business Relief Act; and

3 (2) partner with business-serving
4 organizations, such as chambers of commerce, business
5 associations and small business development centers, to conduct
6 a statewide public outreach campaign to notify businesses in
7 every community of the loans available through the Catastrophic
8 Business Relief Act.

9 SECTION 9. EFFECTIVE DATE.--The effective date of the
10 provisions of this act is July 1, 2024.

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