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SENATE BILL

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

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO THE SMALL BUSINESS INVESTMENT CORPORATION; CHANGING
THE MEMBERSHIP OF THE SMALL BUSINESS INVESTMENT CORPORATION
BOARD OF DIRECTORS; AMENDING REPORTING REQUIREMENTS.

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

SECTION 1. Section 58-29-5 NMSA 1978 (being Laws 2000,
Chapter 97, Section 7, as amended) is amended to read:

"58-29-5. CORPORATION BOARD OF DIRECTORS--APPOINTMENT--
POWERS.--

A. The corporation shall be governed by the board.
The corporation's board of directors shall consist of:

(1) the state treasurer or [~~his~~] the state
treasurer's designee;

(2) the state investment officer or [~~his~~] the
state investment officer's designee;

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1 (3) [~~six~~] three members appointed by the
2 governor, with the advice and consent of the senate, for a term
3 of five years, who shall serve at the pleasure of the governor;
4 and

5 (4) three members appointed by the New Mexico
6 legislative council, with the advice and consent of the senate,
7 for a term of five years; provided that no more than two
8 members shall be members of the same political party.

9 B. Each [~~director~~] member shall hold office for the
10 length of [~~his~~] the member's term in office or until a
11 successor is appointed or elected and begins service on the
12 board.

13 [~~G. The governor shall appoint, with the consent of~~
14 ~~the senate, the six public directors of the board who shall~~
15 ~~serve at the pleasure of the governor.]~~

16 [~~D.~~] C. The governor's and the New Mexico
17 legislative council's appointees to the board shall be public
18 members who have general expertise in small business
19 management, but they shall not be employed by or represent
20 small businesses receiving equity investments from the
21 corporation.

22 [~~E.~~] D. No two members of the board shall be
23 employed by or represent the same company or institution.

24 [~~F.~~] E. The board shall annually elect a [~~chairman~~]
25 chair from among its members and shall elect those other

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1 officers that it determines are necessary for the performance
2 of its duties.

3 [G.] F. The power to set the policies and
4 procedures for the corporation is vested in the board. The
5 board may perform all acts necessary or appropriate to exercise
6 that power.

7 [H.] G. Public members of the board shall be
8 reimbursed for attending meetings of the board as provided in
9 the Per Diem and Mileage Act and shall receive no other
10 compensation, perquisite or allowance.

11 [I.] H. Public members of the board are appointed
12 public officials of the state while carrying out their duties
13 and activities under the Small Business Investment Act. The
14 directors and the employees of the corporation are not liable
15 personally, either jointly or severally, for any debt or
16 obligation created or incurred by the corporation or for any
17 act performed or obligation entered into in an official
18 capacity when done in good faith, without intent to defraud and
19 in connection with the administration, management or conduct of
20 the corporation or affairs relating to it.

21 [J.] I. The board shall conduct an annual audit of
22 the books of accounts, funds and securities of the corporation
23 to be made by a competent and independent firm of certified
24 public accountants. A copy of the audit report shall be filed
25 with the president and posted on the corporation's web site.

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1 The audit shall be open to the public for inspection."

2 SECTION 2. Section 58-29-6 NMSA 1978 (being Laws 2000,
3 Chapter 97, Section 8, as amended) is amended to read:

4 "58-29-6. PRESIDENT--POWERS AND DUTIES.--

5 A. The board shall select a president of the
6 corporation from among its members. The corporation is under
7 the administrative control of the president or a person
8 selected by the board to administer the operations of the
9 corporation. The board shall periodically review and appraise
10 the investment strategy being followed, and the president shall
11 report at least once a month to the board on investment results
12 and related matters. The president shall:

13 (1) act for the corporation in collecting and
14 disbursing money necessary to administer the corporation and
15 conduct its business;

16 (2) sign contracts and incur obligations on
17 behalf of the corporation;

18 (3) perform all acts necessary to exercise
19 power, authority or jurisdiction over the corporation to
20 discharge its functions and fulfill its responsibilities; and

21 (4) make investments pursuant to the Small
22 Business Investment Act and upon approval of the board.

23 B. The president shall submit an annual report,
24 independently audited in accordance with generally accepted
25 procedures governing annual reports, by October 1 of each year

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1 to the governor, the legislative finance committee and any
2 other appropriate legislative committee indicating the business
3 done by the corporation during the previously completed fiscal
4 year and containing a statement of the resources and
5 liabilities of the corporation. The report shall be posted on
6 the corporation's web site and shall include:

7 (1) the average rate of return enjoyed by the
8 corporation on invested assets;

9 (2) recommendations concerning desired changes
10 in the corporation to promote its prompt and efficient
11 administration of policies and claims;

12 (3) recommendations to the legislature and the
13 governor regarding the continued operation of the corporation;
14 and

15 (4) any other information the president deems
16 appropriate."

17 **SECTION 3. TEMPORARY PROVISIONS--TRANSITION MEMBERSHIP**
18 **OF THE SMALL BUSINESS INVESTMENT CORPORATION BOARD OF**
19 **DIRECTORS.--**

20 A. Within thirty days of the effective day of this
21 act, three members shall be appointed to the small business
22 investment corporation board of directors as successors to
23 current public board members by the New Mexico legislative
24 council pursuant to Paragraph (4) of Subsection A of Section 1
25 of this act and shall serve on an interim basis until confirmed

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1 by the senate.

2 B. Within thirty days of the effective date of
3 this act, three members shall be appointed to the small
4 business investment corporation board of directors as
5 successors to current public board members by the governor
6 pursuant to Paragraph (3) of Subsection A of Section 1 this act
7 and shall serve on an interim basis until confirmed by the
8 senate.

9 C. The three members appointed pursuant to
10 Subsection A of this section and the three members appointed
11 pursuant to Subsection B of this section shall, by lot,
12 determine the initial terms of office for each position so
13 that one position will be for a term of one year, one position
14 will be for a term of two years, two positions will be for
15 terms of three years, one position will be for a term of four
16 years and one position will be for a term of five years.
17 Thereafter, the terms of members shall be for five years.

18 SECTION 4. EFFECTIVE DATE.--The effective date of the
19 provisions of this act is July 1, 2011.