

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; CLARIFYING THE POWERS AND  
STATUS OF THE SMALL BUSINESS INVESTMENT CORPORATION; CLARIFYING THE  
CRITERIA REQUIRED OF INVESTMENTS; DECLARING AN EMERGENCY.

H  
B  
  
8  
0  
P  
a  
g  
e  
  
1

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

Section 1. Section 6-10-10.1 NMSA 1978 (being Laws 1988, Chapter 61,  
Section 2, as amended) is amended to read:

"6-10-10.1. SHORT-TERM INVESTMENT FUND CREATED--DISTRIBUTION  
OF EARNINGS--REPORT OF INVESTMENTS.--

A. There is created in the state treasury the "short-term investment  
fund". The fund shall consist of all deposits from governmental entities and Indian  
tribes or pueblos that are placed in the custody of the state treasurer for short-term  
investment purposes pursuant to this section. The state treasurer shall maintain a  
separate account for each governmental entity and Indian tribe or pueblo having  
deposits in the fund.

B. If a local public body is unable to receive payment on public money  
at the rate of interest as set forth in Section 6-10-36 NMSA 1978 from financial  
institutions within the geographic boundaries of the governmental unit, then a local  
public finance official having money of that local public body in his custody not required  
for current expenditure may, with the consent of the appropriate local board of finance,  
if any, remit some or all of such money to the state treasurer for deposit for the  
purpose of short-term investment as allowed by this section.

C. Before local funds are invested or reinvested for the purpose of

short-term investment pursuant to this section, the local public body finance official shall notify and make such funds available to banks, savings and loan associations and credit unions located within the geographical boundaries of their respective governmental unit, subject to the limitation on credit union accounts. To be eligible for such funds, the financial institution shall pay to the local public body the rate established by the state treasurer pursuant to a policy adopted by the state board of finance for such short-term investments.

D. The local public body finance official shall specify the length of time a deposit shall be in the short-term investment fund, but in any event the deposit shall not be made for more than one hundred eighty-one days. The state treasurer through the use of the state fiscal agent shall separately track each such deposit and shall make such information available to the public upon written request.

E. The state treasurer shall invest the short-term investment fund as provided for state funds under Section 6-10-10 NMSA 1978 in investments with a maturity at the time of purchase that does not exceed three hundred ninety-seven days. The state treasurer may elect to have the short-term investment fund consolidated for investment purposes with the state funds under the control of the state treasurer; provided that accurate and detailed accounting records are maintained for the account of each participating entity and Indian tribe or pueblo and that a proportionate amount of interest earned is credited to each of the separate government accounts. The fund shall be invested to achieve its objective, which is to realize the maximum return consistent with safe and prudent management.

F. At the end of each month, all net investment income or losses from

investment of the short-term investment fund shall be distributed by the state treasurer to the contributing entities and Indian tribes or pueblos in amounts directly proportionate to the respective amounts deposited in the fund and the length of time the amounts in the fund were invested. The state treasurer shall charge participating entities, Indian tribes and pueblos reasonable audit, administrative and investment expenses to be paid directly from their net investment income for the investment and administrative services provided pursuant to this section.

G. As used in this section, "local public body" means a political subdivision of the state, including school districts and post-secondary educational institutions.

H. In addition to the deposit of funds of local public bodies, the state treasurer may also accept for deposit, deposit and account for, in the same manner as funds of local public bodies, funds of the following governmental entities if the governing authority of the entity approves by resolution the deposit of the funds for the short-term investment:

- (1) the agricultural commodity commission established under the Agricultural Commodity Commission Act;
- (2) the Albuquerque metropolitan arroyo flood control authority established under the Arroyo Flood Control Act;
- (3) the business improvement district management committee established under the Business Improvement District Act;
- (4) the New Mexico community development council established under the New Mexico Community Assistance Act;
- (5) the governing authority of only special districts authorized

under Chapter 73 NMSA 1978;

(6) the board of trustees established under the Economic Advancement District Act;

(7) the board of directors of a corporation or foundation established under the Educational Assistance Act;

(8) a board of directors established under the Flood Control District Act;

(9) the New Mexico hospital equipment loan council established under the Hospital Equipment Loan Act;

(10) the authority established under the Industrial and Agricultural Finance Authority Act;

(11) the authority established under the Las Cruces Arroyo Flood Control Act;

(12) the authority established under the Mortgage Finance Authority Act;

(13) the authority established under the Municipal Mortgage Finance Act;

(14) the authority established under the Public School Insurance Authority Act;

(15) the authority established under the Southern Sandoval County Arroyo Flood Control Act;

(16) a board of trustees established under the Special Hospital District Act;

(17) the authority established under the New Mexico Finance

Authority Act; and

(18) the corporation established under the Small Business Investment Act.

I. In addition to the deposit of funds of local public bodies, the state treasurer may also accept for deposit and deposit and account for, in the same manner as funds of local public bodies, funds of any Indian tribe or pueblo in the state if authorized to do so under a joint powers agreement executed by the state treasurer and the governing authority of the Indian tribe or pueblo under the provisions of the Joint Powers Agreements Act."

Section 2. Section 7-27-5.15 NMSA 1978 (being Laws 1990, Chapter 126, Section 5, as amended by Laws 2001, Chapter 238, Section 1 and also by Laws 2001, Chapter 252, Section 10) is amended to read:

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

A. No more than three percent of the market value of the severance tax permanent fund may be invested in New Mexico private equity funds under this section.

B. If an investment is made under Subsection A of this section, not more than fifteen million dollars (\$15,000,000) of the amount authorized for investment pursuant to Subsection A of this section shall be invested in any one New Mexico private equity fund. The amount invested in any one New Mexico private equity fund shall not exceed fifty percent of the committed capital of that fund.

C. In making investments pursuant to Subsection A of this section, the

council shall give consideration to investments in New Mexico private equity funds whose investments enhance the economic development objectives of the state.

D. The state investment officer shall make investments pursuant to Subsection A of this section only upon approval of the council and upon review of the recommendation of the private equity investment advisory committee. The state investment officer is authorized to make investments pursuant to Subsection A of this section contingent upon a New Mexico private equity fund securing paid-in investments from other accredited investors for the balance of the minimum committed capital of the fund.

E. As used in this section:

(1) "committed capital" means the sum of the fixed amounts of money that accredited investors have obligated for investment in a New Mexico private equity fund and which fixed amounts may be invested in that fund on one or more payments over time; and

(2) "New Mexico private equity fund" means a limited partnership, limited liability company or corporation organized and operating in the United States and maintaining an office staffed by a full-time investment officer in New Mexico 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 a minimum committed capital of fifteen million dollars (\$15,000,000);

(d) 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 and who has established permanent residency in the state;

(e) 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 the state and that hold promise for attracting additional capital from individual or institutional investors nationwide for businesses in the state; and

(f) 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.

F. The state investment officer shall make a commitment to the small business investment corporation pursuant to the Small Business Investment Act to invest one-fourth percent of the market value of the severance tax permanent fund by July 1, 2001 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, 2003 and on each July 1 thereafter, the state investment officer shall determine whether the invested capital in the small business investment corporation is less than one-fourth percent of the market value of the severance tax permanent fund. If the

invested capital in the small business investment corporation is less than one-fourth percent of the market value of the severance tax permanent fund, further commitments shall be made until the invested capital is equal to one-fourth percent of the market value of the fund.

G. The state investment officer shall report semiannually on the New Mexico private equity 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 fund is invested and how each investment enhances the economic development objectives of the state."

Section 3. Section 41-4-3 NMSA 1978 (being Laws 1976, Chapter 58, Section 3, as amended) is amended to read:

"41-4-3. DEFINITIONS.--As used in the Tort Claims Act:

- A. "board" means the risk management advisory board;
- B. "governmental entity" means the state or any local public body as defined in Subsections C and H of this section;
- C. "local public body" means all political subdivisions of the state and their agencies, instrumentalities and institutions and all water and natural gas associations organized pursuant to Chapter 3, Article 28 NMSA 1978;
- D. "law enforcement officer" means a full-time salaried public employee of a governmental entity whose principal duties under law are to hold in custody any



person accused of a criminal offense, to maintain public order or to make arrests for crimes, or members of the national guard when called to active duty by the governor;

E. "maintenance" does not include:

(1) conduct involved in the issuance of a permit, driver's license or other official authorization to use the roads or highways of the state in a particular manner; or

(2) an activity or event relating to a public building or public housing project that was not foreseeable;

F. "public employee" means an officer, employee or servant of a governmental entity, excluding independent contractors except for individuals defined in Paragraphs (7), (8), (10) and (14) of this subsection, or of a corporation organized pursuant to the Educational Assistance Act, the Small Business Investment Act or the Mortgage Finance Authority Act and including:

(1) elected or appointed officials;

(2) law enforcement officers;

(3) persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation;

(4) licensed foster parents providing care for children in the custody of the human services department, corrections department or department of health, but not including foster parents certified by a licensed child placement agency;

(5) members of state or local selection panels established pursuant to the Adult Community Corrections Act;

(6) members of state or local selection panels established pursuant to the Juvenile Community Corrections Act;

- (7) licensed medical, psychological or dental arts practitioners providing services to the corrections department pursuant to contract;
- (8) members of the board of directors of the New Mexico medical insurance pool;
- (9) individuals who are members of medical review boards, committees or panels established by the educational retirement board or the retirement board of the public employees retirement association;
- (10) licensed medical, psychological or dental arts practitioners providing services to the children, youth and families department pursuant to contract;
- (11) members of the board of directors of the New Mexico educational assistance foundation;
- (12) members of the board of directors of the New Mexico student loan guarantee corporation;
- (13) members of the New Mexico mortgage finance authority;
- (14) volunteers, employees and board members of court-appointed special advocate programs; and
- (15) members of the board of directors of the small business investment corporation;

H  
B  
  
8  
0  
P  
a  
g  
e  
  
1  
0

G. "scope of duty" means performing any duties that a public employee is requested, required or authorized to perform by the governmental entity, regardless of the time and place of performance; and

H. "state" or "state agency" means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions."

Section 4. Section 58-29-1 NMSA 1978 (being Laws 2000, Chapter 97,  
Section 3) is amended to read:

"58-29-1. SHORT TITLE.--Chapter 58, Article 29 NMSA 1978 may be cited as  
the "Small Business Investment Act"."

Section 5. Section 58-29-2 NMSA 1978 (being Laws 2000, Chapter 97,  
Section 4) is amended to read:

"58-29-2. PURPOSES.--The purposes of the Small Business Investment Act  
are to:

A. implement the provisions of Subsection D of Section 14 of Article 9  
of the constitution of New Mexico to create new job opportunities by providing capital  
for land, buildings or infrastructure for facilities to support new or expanding  
businesses; and

B. otherwise make debt investments and equity investments to create  
new job opportunities to support new or expanding businesses in a manner consistent  
with the constitution of New Mexico."

Section 6. Section 58-29-3 NMSA 1978 (being Laws 2000, Chapter 97,  
Section 5) is amended to read:

"58-29-3. DEFINITIONS.--As used in the Small Business Investment Act:

- A. "board" means the small business investment corporation's board;
- B. "corporation" means the small business investment corporation;
- C. "debt investment" means direct or indirect loans or other debt

obligations, the proceeds of which shall be used to:

- (1) support the acquisition or development of land, buildings or  
infrastructure;

(2) create job opportunities; or  
(3) otherwise enhance the economic development objectives of  
the state;

D. "equity investment" means direct or indirect ownership interests in  
New Mexico businesses, the proceeds of which investment shall be used to:

(1) support the acquisition or development of land, buildings or  
infrastructure;

(2) create job opportunities; or  
(3) otherwise enhance the economic development objectives of  
the state;

E. "fund" means the small business investment corporation fund;

F. "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

G. "president" means the president of the corporation."

Section 7. Section 58-29-4 NMSA 1978 (being Laws 2000, Chapter 97,  
Section 6, as amended) is amended to read:

"58-29-4. SMALL BUSINESS INVESTMENT CORPORATION CREATED--  
POWERS OF THE CORPORATION.--

A. The "small business investment corporation" is created as a  
nonprofit, independent, public corporation. The corporation may:

(1) sue and be sued in all actions arising out of any act or

omission in connection with its business or affairs;

(2) enter into any contracts or obligations relating to the corporation that are authorized or permitted by law;

(3) cooperate with small business development centers, regional economic development districts and parties that have demonstrated abilities and relationships in providing financial services to new and emerging businesses;

(4) make investments that consider the enhancement of economic development objectives of the state as described in the Small Business Investment Act; and

(5) make, alter or repeal such rules with respect to the corporation's operations as are necessary to carry out its functions and duties in the administration of the Small Business Investment Act.

B. The corporation shall not be considered a state agency for any purpose. The corporation is exempted from the provisions of the Personnel Act and the Procurement Code.

C. Except as provided in the Tort Claims Act, the state shall not be liable for any obligations incurred by the corporation."

Section 8. 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 designee;

(2) the state investment officer or his designee;

(3) six members appointed by the governor.

B. Each director shall hold office for the length of his term in office or until a successor is appointed or elected and begins service on the board.

C. The governor shall appoint, with the consent of the senate, the six public directors of the board who shall serve at the pleasure of the governor.

D. The governor's appointees to the board shall be public members who have general expertise in small business management, but they shall not be employed by or represent small businesses receiving equity investments from the corporation.

E. No two members of the board shall be employed by or represent the same company or institution.

F. The board shall annually elect a chairman from among its members and shall elect those other officers it determines necessary for the performance of its duties.

G. The power to set the policies and procedures for the corporation is vested in the board. The board may perform all acts necessary or appropriate to exercise that power.

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

I. Public members of the board are appointed public officials of the state while carrying out their duties and activities under the Small Business Investment Act. The directors and the employees of the corporation are not liable personally,

either jointly or severally, for any debt or obligation created or incurred by the corporation or for any act performed or obligation entered into in an official capacity when done in good faith, without intent to defraud and in connection with the administration, management or conduct of the corporation or affairs relating to it.

J. The board shall conduct an annual audit of the books of accounts, funds and securities of the corporation to be made by a competent and independent firm of certified public accountants. A copy of the audit report shall be filed with the president. The audit shall be open to the public for inspection."

Section 9. A new section of the Small Business Investment Act is enacted to read:

"PERMITTED INVESTMENTS.--The corporation may:

A. make equity investments in New Mexico businesses, provided that:

(1) the investments are made in conjunction with cooperative agreements with parties that have demonstrated abilities and relationships in providing financial services to new and emerging businesses;

(2) an equity investment in any one business may not exceed ten percent of the fund; and

(3) the investments represent no more than forty-nine percent of the total amount of equity from invested capital of a business; or

B. make debt investments in New Mexico businesses, provided that:

(1) the investments are made in conjunction with cooperative agreements with parties that have demonstrated abilities and relationships in providing financial services to new and emerging businesses; and

(2) a debt investment in any one business may not exceed ten

percent of the fund."

Section 10. A new section of the Small Business Investment Act is enacted to read:

"RETURN TO SEVERANCE TAX PERMANENT FUND.--Annually, no later than thirty days after the delivery of its annual report to the governor and the legislative finance committee, the corporation shall return to the severance tax permanent fund an amount equal to the net excess of funds held by the corporation. For purposes of this section, "net excess of funds" means the return on investments to the corporation in the amount of dividends and interest actually received plus any capital gains actually realized, less the operating expenses of the corporation and less amounts reasonably reserved for losses."

Section 11. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

H  
B  
8  
0  
P  
a  
g  
e  
1  
6