

1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
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10 46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

11 AN ACT

12 RELATING TO ECONOMIC DEVELOPMENT; AMENDING THE SMALL BUSINESS
13 INVESTMENT ACT TO CLARIFY ITS PURPOSE OF EQUITY INVESTMENTS;
14 REVISING THE COMPOSITION OF THE SMALL BUSINESS INVESTMENT
15 BOARD.

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

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

21 "7-27-5.15. NEW MEXICO PRIVATE EQUITY [~~FUND~~] FUNDS AND
22 SMALL BUSINESS INVESTMENTS. --

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

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1 B. If an investment is made under Subsection A of
2 this section, not more than fifteen million dollars
3 (\$15,000,000) of the amount authorized for investment pursuant
4 to Subsection A of this section shall be invested in any one
5 New Mexico private equity fund. The amount invested in any one
6 New Mexico private equity fund shall not exceed fifty percent
7 of the committed capital of that fund.

8 C. In making investments pursuant to Subsection A
9 of this section, the council shall give consideration to
10 investments in New Mexico private equity funds whose
11 investments enhance the economic development objectives of the
12 state.

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

22 E. As used in this section:

23 (1) "committed capital" means the sum of the
24 fixed amounts of money that accredited investors have obligated
25 for investment in a New Mexico private equity fund and which

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1 fixed amounts may be invested in that fund on one or more
 2 payments over time; and

3 (2) "New Mexico private equity fund" means any
 4 limited partnership, limited liability company or corporation
 5 organized and operating in the United States and maintaining an
 6 office staffed by a full-time investment officer in New Mexico
 7 that:

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

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

15 (c) has a minimum committed capital of
 16 fifteen million dollars (\$15,000,000);

17 (d) has at least one full-time manager
 18 with at least three years of professional experience in
 19 assessing the growth prospects of businesses or evaluating
 20 business plans and who has established permanent residency in
 21 the state;

22 (e) is committed to investing or helps
 23 secure investing by others in an amount at least equal to the
 24 total investment made by the state investment officer in that
 25 fund pursuant to this section, in businesses with a principal

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1 place of business in the state and that hold promise for
2 attracting additional capital from individual or institutional
3 investors nationwide for businesses in the state; and

4 (f) accepts investments only from
5 accredited investors as that term is defined in Section 2 of
6 the federal Securities Act of 1933, as amended, (15 U.S.C.
7 Section 77(b)) and rules and regulations promulgated pursuant
8 to that section.

9 F. The state investment officer shall make a
10 commitment to the small business investment corporation
11 pursuant to the Small Business Investment Act to invest one-
12 fourth of one percent of the market value of the severance tax
13 permanent fund by July 1, 2001 to create new job opportunities
14 by ~~[providing land, buildings or infrastructure for facilities~~
15 ~~to support new or expanding businesses]~~ making equity
16 investments in corporations or limited liability corporations
17 that meet the small business administration's guidelines as
18 either new or expanding small businesses. If invested capital
19 in the small business investment corporation should at any time
20 fall below one-fourth of one percent of the market value of the
21 severance tax permanent fund, further commitments shall be made
22 until the invested capital is equal to one-fourth of one
23 percent of the market value of the fund. As used in this
24 subsection, "invested capital" means the original capital
25 contributed less any return of cost by the private equity

1 funds.

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

4 "58-29-2. PURPOSE. -- The purpose of the Small Business
5 Investment Act is to implement the provisions of Article 9,
6 Section 14 of the constitution of New Mexico to create new job
7 opportunities by providing [~~land, buildings or infrastructure~~
8 ~~for facilities~~] equity investments to support new or expanding
9 businesses. "

10 Section 3. Section 58-29-4 NMSA 1978 (being Laws 2000,
11 Chapter 97, Section 6, as amended) is amended to read:

12 "58-29-4. SMALL BUSINESS INVESTMENT CORPORATION
13 CREATED-- POWERS OF THE CORPORATION. --

14 A. The "small business investment corporation" is
15 created as a nonprofit, independent, public corporation for the
16 purpose of creating new job opportunities by making equity
17 investments [~~in land, buildings or infrastructure for~~
18 ~~facilities~~] to support new or expanding businesses. The
19 corporation [~~may~~] shall:

20 (1) make equity investments in New Mexico
21 small businesses that:

22 (a) have rural development business and
23 industrial loans approved by the United States small business
24 administration or the United States department of agriculture
25 or indebtedness otherwise collateralized to the satisfaction of

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1 the board;

2 (b) are no more than forty-nine percent
3 of the [~~total capital equity~~] ownership of a business; and

4 (c) pay an annual dividend to the
5 severance tax permanent fund of not less than five percent of
6 the original capital equity investment by the corporation in
7 the small business;

8 [~~(2) hold redeemable preferred stock of a~~
9 ~~small business for a fixed period of time not to exceed ten~~
10 ~~years and have rural development business and industrial loans~~
11 ~~approved by the United States small business administration or~~
12 ~~the United States department of agriculture or indebtedness~~
13 ~~otherwise collateralized to the satisfaction of the board;~~

14 ~~(3)]~~ (2) sue and be sued in all actions
15 arising out of any act or omission in connection with its
16 business or affairs;

17 [~~(4)]~~ (3) enter into any contracts or
18 obligations relating to the corporation that are authorized or
19 permitted by law;

20 [~~(5)]~~ (4) cooperate with small business
21 development centers and regional economic development
22 districts; and

23 [~~(6)]~~ (5) invest not more than ten percent of
24 the fund in any one small business enterprise [~~and~~

25 ~~(7) make investments that consider the~~

1 ~~enhancement of economic development objectives of the state].~~

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

5 C. The state shall not be liable for any
6 obligations incurred by the corporation. "

7 Section 4. Section 58-29-5 NMSA 1978 (being Laws 2000,
8 Chapter 97, Section 7, as amended) is amended to read:

9 "58-29-5. CORPORATION BOARD OF DIRECTORS--APPOINTMENT--
10 POWERS. --

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

13 (1) the state treasurer or his designee;

14 (2) the state investment officer or his
15 designee;

16 [~~(3) the president of the New Mexico bankers
17 association or his designee;~~

18 ~~(4) the president of the New Mexico
19 independent community bankers association or his designee;~~

20 ~~(5)] (3) the state small business development
21 center director or his designee;~~

22 (4) as [a] non-voting [~~member~~] members, the
23 director of the New Mexico district of the United States small
24 business administration or his designee and the state executive
25 director of the United States department of agriculture farm

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1 service agency; and

2 [~~(6) four~~] (5) six members appointed [or
3 elected] as provided in this section.

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

7 C. The governor shall appoint, with the consent of
8 the senate, the [~~initial four~~] six public directors of the
9 board who shall serve at the pleasure of the governor. [and
10 ~~the full board shall then elect the president.~~

11 ~~D. After the governor appoints the initial four~~
12 ~~public directors of the board, those directors shall determine~~
13 ~~by lot their initial terms, which shall be two directors for~~
14 ~~two years and two directors for four years. Thereafter, each~~
15 ~~public member director shall be appointed or elected to a four-~~
16 ~~year term. At the expiration of the terms of the two initial~~
17 ~~directors whose terms are two years, the governor shall appoint~~
18 ~~one director and the board shall elect one director for full~~
19 ~~four-year terms. At the expiration of the terms of the two~~
20 ~~initial directors whose terms are four years, the governor~~
21 ~~shall appoint one director and the board shall elect one~~
22 ~~director for full four-year terms. Thereafter, as vacancies~~
23 ~~arise, public member directors shall be appointed or elected so~~
24 ~~that at all times two shall be appointed by the governor and~~
25 ~~two shall be elected by the board in accordance with provisions~~

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1 ~~determined by the board.~~

2 ~~E. The governor shall not remove a director he~~
 3 ~~appoints unless the removal is approved by a two-thirds' vote~~
 4 ~~of the members of the senate.~~

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

10 ~~[G.]~~ E. No two members of the board shall be
 11 employed by or represent the same company or institution.

12 ~~[H.]~~ F. The board shall annually elect a chairman
 13 from among its members and shall elect those other officers it
 14 determines necessary for the performance of its duties.

15 ~~[I.]~~ G. The power to set the policies and
 16 procedures for the corporation is vested in the board. The
 17 board may perform all acts necessary or appropriate to exercise
 18 that power.

19 ~~[J.]~~ H. Public members of the board shall be
 20 reimbursed for attending meetings of the board as provided in
 21 the Per Diem and Mileage Act and shall receive no other
 22 compensation, perquisite or allowance.

23 ~~[K.]~~ I. Public members of the board are appointed
 24 public officials of the state while carrying out their duties
 25 and activities under the Small Business Investment Act. The

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1 directors and the employees of the corporation are not liable
2 personally, either jointly or severally, for any debt or
3 obligation created or incurred by the corporation or for any
4 act performed or obligation entered into in an official
5 capacity when done in good faith, without intent to defraud and
6 in connection with the administration, management or conduct of
7 the corporation or affairs relating to it.

8 [E-] J. The board shall conduct an annual audit of
9 the books of accounts, funds and securities of the corporation
10 to be made by a competent and independent firm of certified
11 public accountants. A copy of the audit report shall be filed
12 with the president. The audit shall be open to the public for
13 inspection. "