

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 10

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; AMENDING THE SMALL BUSINESS
INVESTMENT ACT TO CLARIFY ITS PURPOSE OF EQUITY INVESTMENTS;
REVISING THE COMPOSITION OF THE SMALL BUSINESS INVESTMENT
BOARD; DECLARING AN EMERGENCY.

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

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

"7-27-5.15. NEW MEXICO PRIVATE EQUITY ~~[FUND]~~ 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.

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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

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

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 New Mexico small businesses that satisfy the
17 size eligibility requirements for financial assistance from the
18 United States small business administration pursuant to 13 Code
19 of Federal Regulations, Parts 121.201 and 121.301 or their
20 successors. If invested capital in the small business
21 investment corporation should at any time fall below one-fourth
22 of one percent of the market value of the severance tax
23 permanent fund, further commitments shall be made until the
24 invested capital is equal to one-fourth of one percent of the
25 market value of the fund. As used in this subsection,

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1 "invested capital" means the original capital contributed less
2 any return of cost by the private equity funds.

3 Section 2. Section 41-4-3 NMSA 1978 (being Laws 1976,
4 Chapter 58, Section 3, as amended) is amended to read:

5 "41-4-3. DEFINITIONS. --As used in the Tort Claims Act:

6 A. "board" means the risk management advisory
7 board;

8 B. "governmental entity" means the state or any
9 local public body as defined in Subsections C and H of this
10 section;

11 C. "local public body" means all political
12 subdivisions of the state and their agencies, instrumentalities
13 and institutions and all water and natural gas associations
14 organized pursuant to Chapter 3, Article 28 NMSA 1978;

15 D. "law enforcement officer" means [~~any~~] a full-
16 time salaried public employee of a governmental entity whose
17 principal duties under law are to hold in custody any person
18 accused of a criminal offense, to maintain public order or to
19 make arrests for crimes, or members of the national guard when
20 called to active duty by the governor;

21 E. "maintenance" does not include:

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

25 (2) an activity or event relating to a public

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1 building or public housing project that was not foreseeable;

2 F. "public employee" means any officer, employee or
3 servant of a governmental entity, excluding independent
4 contractors except for individuals defined in Paragraphs (7),
5 (8), (10) and (14) of this subsection, or of a corporation
6 organized pursuant to the Educational Assistance Act, the Small
7 Business Investment Act or the Mortgage Finance Authority Act
8 and including:

9 (1) elected or appointed officials;

10 (2) law enforcement officers;

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

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

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

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

23 (7) licensed medical, psychological or dental
24 arts practitioners providing services to the corrections
25 department pursuant to contract;

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1 (8) members of the board of directors of the
2 New Mexico [~~comprehensive health~~] medical insurance pool;

3 (9) individuals who are members of medical
4 review boards, committees or panels established by the
5 educational retirement board or the retirement board of the
6 public employees retirement association;

7 (10) licensed medical, psychological or dental
8 arts practitioners providing services to the children, youth
9 and families department pursuant to contract;

10 (11) members of the board of directors of the
11 New Mexico educational assistance foundation;

12 (12) members of the board of directors of the
13 New Mexico student loan guarantee corporation;

14 (13) members of the New Mexico mortgage
15 finance authority; [~~and~~]

16 (14) volunteers, employees and board members
17 of court-appointed special advocate programs; and

18 (15) members of the board of directors of the
19 small business investment corporation.

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

24 H. "state" or "state agency" means the state of New
25 Mexico or any of its branches, agencies, departments,

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boards, instrumentalities or institutions. "

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

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

Section 4. 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; ~~[and]~~

C. "New Mexico small business" means, in the case of a corporation or limited liability company, a business with a 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 a principal place of business and eighty percent of its assets located in New Mexico and that, in each case, satisfies the size eligibility requirements for financial assistance from the United States small business

1 administration pursuant to 13 Code of Federal Regulations,
2 Parts 121.201 and 121.301 or their successors; and

3 [E-] D. "president" means the president of the
4 corporation. "

5 Section 5. Section 58-29-4 NMSA 1978 (being Laws 2000,
6 Chapter 97, Section 6, as amended) is amended to read:

7 "58-29-4. SMALL BUSINESS INVESTMENT CORPORATION
8 CREATED- - POWERS OF THE CORPORATION. - -

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

15 (1) make equity investments in New Mexico
16 small businesses that:

17 (a) ~~have rural development business and~~
18 ~~industrial loans approved by the United States small business~~
19 ~~administration or the United States department of agriculture]~~
20 either a loan guaranteed by one of the following agencies of
21 the United States pursuant to one of the following regulations
22 or any successor provisions: 1) the department of agriculture
23 under its business and industry guaranteed loan program
24 authorized by 7 Code of Federal Regulations, Part 4279; 2) the
25 farm service agency under its guaranteed farm loan program

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1 authorized by 7 Code of Federal Regulations, Part 762; 3) a
2 loan guaranteed by the United States small business
3 administration under Section 7(a) guaranteed loan program
4 authorized by 13 Code of Federal Regulations, Part 120.200; or
5 4) the small business administration under its Section 504
6 development company loan program authorized by 13 Code of
7 Federal Regulations, Part 120.800; or indebtedness otherwise
8 collateralized to the satisfaction of the board;

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

11 (c) pay an annual dividend to the
12 [~~severance tax permanent fund~~] corporation of not less than
13 five percent of the original capital equity investment by the
14 corporation in the small business;

15 (d) are in the form of a preferred
16 equity investment redeemable within periods that may be
17 determined by the corporation; and

18 (e) do not exceed more than ten percent
19 of the small business investment corporation fund in any one
20 business;

21 [~~(2) hold redeemable preferred stock of a~~
22 ~~small business for a fixed period of time not to exceed ten~~
23 ~~years and have rural development business and industrial loans~~
24 ~~approved by the United States small business administration or~~
25 ~~the United States department of agriculture or indebtedness~~

~~otherwise collateralized to the satisfaction of the board;~~

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

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

~~(5)~~ (4) cooperate with small business development centers and regional economic development districts; and

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

~~(7) make investments that consider the enhancement of economic development objectives of the state]~~

(5) make, alter or repeal any rules with respect to the corporation's operations that 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. The state shall not be liable for any obligations incurred by the corporation. "

Section 6. Section 58-29-5 NMSA 1978 (being Laws 2000, Chapter 97, Section 7, as amended) is amended to read:

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1 "58-29-5. CORPORATION BOARD OF DIRECTORS--APPOINTMENT--
2 POWERS. --

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

5 (1) the state treasurer or his designee;

6 (2) the state investment officer or his
7 designee;

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

10 [~~(4) the president of the New Mexico~~
11 ~~independent community bankers association or his designee;~~

12 ~~(5)] (3) the state small business development
13 center director or his designee;~~

14 (4) as [a] non-voting [~~member~~] members, the
15 director of the New Mexico district of the United States small
16 business administration or his designee and the state executive
17 director of the United States department of agriculture farm
18 service agency; and

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

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

24 C. The governor shall appoint, with the consent of
25 the senate, the [~~initial four~~] six public directors of the

1 board who shall serve at the pleasure of the governor. [~~and~~
 2 ~~the full board shall then elect the president.~~

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

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

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

1 corporation.

2 [G-] E. No two members of the board shall be
3 employed by or represent the same company or institution.

4 [H-] F. The board shall annually elect a chairman
5 from among its members and shall elect those other officers it
6 determines necessary for the performance of its duties.

7 [I-] G. The power to set the policies and
8 procedures for the corporation is vested in the board. The
9 board may perform all acts necessary or appropriate to exercise
10 that power.

11 [J-] H. Public members of the board shall be
12 reimbursed for attending meetings of the board as provided in
13 the Per Diem and Mileage Act and shall receive no other
14 compensation, perquisite or allowance.

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

25 [L-] J. The board shall conduct an annual audit of

1 the books of accounts, funds and securities of the corporation
2 to be made by a competent and independent firm of certified
3 public accountants. A copy of the audit report shall be filed
4 with the president. The audit shall be open to the public for
5 inspection. "

6 Section 7. A new section of the Small Business Investment
7 Act is enacted to read:

8 "[NEW MATERIAL] RETURN TO SEVERANCE TAX PERMANENT FUND. --
9 Annually, no later than thirty days after the delivery of its
10 annual report to the governor and the legislative finance
11 committee, the corporation shall return to the severance tax
12 permanent fund an amount equal to the net excess of funds held
13 by the corporation. As used in this section, "net excess of
14 funds" means the return on investment to the corporation in the
15 amount of dividends and interest actually realized, less the
16 operating expenses of the corporation and less amounts
17 reasonably reserved for losses. "

18 Section 8. EMERGENCY.--It is necessary for the public
19 peace, health and safety that this act take effect immediately.

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