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HOUSE BILL 122

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Roberto "Bobby" J. Gonzales

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO STATE FUNDS; PERMITTING THE STATE INVESTMENT OFFICER TO LOAN TO FILM PRODUCTION COMPANIES A PORTION OF EXPECTED FILM PRODUCTION TAX CREDITS; ELIMINATING STATE INVESTMENT OFFICER AUTHORITY TO PURCHASE FILM PRODUCTION TAX CREDITS; PROVIDING FOR INTERCEPTION OF TAX REFUNDS TO AID IN REPAYMENT TO THE STATE INVESTMENT OFFICER OF CERTAIN LOANS TO FILM PRODUCTION COMPANIES; DECLARING AN EMERGENCY.

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

Section 1. Section 7-2C-2 NMSA 1978 (being Laws 1985, Chapter 106, Section 2, as amended) is amended to read:

"7-2C-2. PURPOSE. --

A. The purpose of the Tax Refund Intercept Program Act is to comply with state and federal law:

(1) by enhancing the enforcement of child

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1 support and medical support obligations;

2 (2) to aid collection of outstanding debts  
3 owed for overpayment of public assistance and overissuance of  
4 food stamps and overpayment of unemployment compensation  
5 benefits and nonpayment of contributions or payments in lieu of  
6 contributions or other amounts due under the Unemployment  
7 Compensation Law;

8 (3) to promote repayment of educational loans;

9 (4) to aid collection of fines, fees and costs  
10 owed to the district, magistrate and municipal courts; ~~and~~

11 (5) to aid collection of fines, fees and costs  
12 owed to the Bernalillo county metropolitan court; and

13 (6) to aid in the payment to the state  
14 investment officer of film production tax credit amounts owed  
15 to the state investment officer due to a loan made against the  
16 credit pursuant to Subsection D of Section 7-27-5.26 NMSA 1978.

17 B. Efforts to accomplish the purpose of the Tax  
18 Refund Intercept Program Act may be enhanced by establishing a  
19 system to collect debts, in particular, outstanding child  
20 support obligations, educational loans, amounts due under the  
21 Unemployment Compensation Law, fines, fees and costs owed to  
22 the district, magistrate and municipal courts, film production  
23 tax credit amounts owed to the state investment officer and  
24 fines, fees and costs owed to the Bernalillo county  
25 metropolitan court, by setting off the amount of such debts

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1 against the state income tax refunds or film production tax  
2 credit amounts due the debtors."

3 Section 2. Section 7-27-5.26 NMSA 1978 (being Laws 2000  
4 (2nd S.S.), Chapter 6, Section 2, as amended) is amended to  
5 read:

6 "7-27-5.26. INVESTMENT IN FILMS TO BE PRODUCED IN NEW  
7 MEXICO. --

8 A. No more than two and one-half percent of the  
9 market value of the severance tax permanent fund may be  
10 invested in New Mexico film private equity funds or a New  
11 Mexico film project under this section.

12 B. If an investment is made under this section, not  
13 more than seven million five hundred thousand dollars  
14 (\$7,500,000) of the amount authorized for investment pursuant  
15 to Subsection A of this section shall be invested in any one  
16 New Mexico film private equity fund or any one New Mexico film  
17 project.

18 C. The state investment officer shall make  
19 investments pursuant to this section only upon approval of the  
20 state investment council after a review by the private equity  
21 investment advisory committee and the New Mexico film division  
22 of the economic development department. The state investment  
23 officer may make debt or equity investments pursuant to this  
24 section only in New Mexico film projects or New Mexico film  
25 private equity funds that invest only in film projects that:

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1 (1) are filmed wholly or substantially in New  
2 Mexico;

3 (2) have shown to the satisfaction of the New  
4 Mexico film division that a distribution contract is in place  
5 with a reputable distribution company;

6 (3) have agreed that, while filming in  
7 New Mexico, a majority of the production crew will be  
8 New Mexico residents;

9 (4) have posted a completion bond that has  
10 been approved by the New Mexico film division; provided that a  
11 completion bond shall not be required if the fund or project is  
12 guaranteed pursuant to Paragraph (5) of this subsection; and

13 (5) have obtained a full, unconditional and  
14 irrevocable guarantee of repayment of the invested amount in  
15 favor of the severance tax permanent fund:

16 (a) from an entity that has a credit  
17 rating of not less than Baa or BBB by a national rating agency;

18 (b) from a substantial subsidiary of an  
19 entity that has a credit rating of not less than Baa or BBB by  
20 a national rating agency;

21 (c) by providing a full, unconditional  
22 and irrevocable letter of credit from a United States  
23 incorporated bank with a credit rating of not less than A by a  
24 national rating agency; or

25 (d) from a substantial and solvent

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1 entity as determined by the state investment council in  
2 accordance with its standards and practices; or

3 (6) if not guaranteed pursuant to Paragraph  
4 (5) of this subsection, have obtained no less than one-third of  
5 the estimated total production costs from other sources as  
6 approved by the state investment officer.

7 D. The state investment officer may [~~purchase at a~~  
8 ~~discount, from~~] loan at a market rate of interest, with respect  
9 to an eligible New Mexico film project, up to eighty percent of  
10 an expected and estimated film production tax credit available  
11 to a film production company pursuant to the provisions of  
12 Section 7-2F-1 NMSA 1978; provided that the film production  
13 company agrees to name the state investment officer as its  
14 agent for the purpose of filing an application for the film  
15 production tax credit to which the company is entitled if the  
16 company does not apply for the film production tax credit. The  
17 New Mexico film division of the economic development department  
18 shall determine the estimated amount of a film production tax  
19 credit. The state investment council shall establish  
20 guidelines for the state investment officer's initiation of a  
21 [~~purchase~~] loan and the terms of the [~~purchase~~] loan.

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 film private equity fund, which~~

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

3 ~~(2)~~ (1) "film project" means a single media  
4 or multimedia program, including advertising messages, fixed on  
5 film, videotape, computer disc, laser disc or other similar  
6 delivery medium from which the program can be viewed or  
7 reproduced and that is intended to be exhibited in theaters;  
8 licensed for exhibition by individual television stations,  
9 groups of stations, networks, cable television stations or  
10 other means; or licensed for the home viewing market; and

11 ~~(3)~~ (2) "New Mexico film private equity  
12 fund" means any limited partnership, limited liability company  
13 or corporation organized and operating in the United States  
14 that:

15 (a) has as its primary business activity  
16 the investment of funds in return for equity in film projects  
17 produced wholly or partly in New Mexico;

18 (b) holds out the prospects for capital  
19 appreciation from such investments; and

20 (c) accepts investments only from  
21 accredited investors as that term is defined in Section 2 of  
22 the federal Securities Act of 1933, as amended, and rules  
23 promulgated pursuant to that section."

24 Section 3. EMERGENCY.--It is necessary for the public  
25 peace, health and safety that this act take effect immediately.

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