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SENATE BILL 28

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

Timothy M. Keller

FOR THE INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

AN ACT

RELATING TO PUBLIC FINANCES; INCREASING THE PERCENTAGE OF THE SEVERANCE TAX PERMANENT FUND ALLOCATED TO THE SMALL BUSINESS INVESTMENT CORPORATION FOR INVESTMENT; REQUIRING THAT THE SMALL BUSINESS INVESTMENT CORPORATION COMMIT FUNDS WITHIN THREE YEARS; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2007.

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 2007, Chapter 355, Section 1 and by Laws 2007, Chapter 359, Section 1 and also by Laws 2007, Chapter 360, Section 1) is amended to read:

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

A. No more than [~~nine~~] ten percent of the market

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1 value of the severance tax permanent fund may be invested in
2 New Mexico private equity funds or New Mexico businesses under
3 this section.

4 B. In making investments pursuant to Subsection A
5 of this section, the council shall make investments in New
6 Mexico private equity funds or New Mexico businesses whose
7 investments or enterprises enhance the economic development
8 objectives of the state.

9 C. The state investment officer shall make
10 investments pursuant to Subsection A of this section only upon
11 approval of the council, upon review of the recommendation of
12 the private equity investment advisory committee and within
13 guidelines and policies established by the council.

14 D. As used in this section:

15 (1) "New Mexico business" means, in the case
16 of a corporation or limited liability company, a business with
17 its principal office and a majority of its full-time employees
18 located in New Mexico or, in the case of a limited partnership,
19 a business with its principal place of business and eighty
20 percent of its assets located in New Mexico; and

21 (2) "New Mexico private equity fund" means a
22 limited partnership, limited liability company or corporation
23 organized and operating in the United States and maintaining an
24 office staffed by a full-time investment officer in New Mexico
25 that:

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1 (a) has as its primary business activity
2 the investment of funds in return for equity in or debt of
3 businesses for the purpose of providing capital for start-up,
4 expansion, product or market development, recapitalization or
5 similar business purposes;

6 (b) holds out the prospects for capital
7 appreciation from such investments;

8 (c) has at least one full-time manager
9 with at least three years of professional experience in
10 assessing the growth prospects of businesses or evaluating
11 business plans and who has established permanent residency in
12 the state;

13 (d) is committed to investing or helps
14 secure investing by others, in an amount at least equal to the
15 total investment made by the state investment officer in that
16 fund pursuant to this section, in businesses with a principal
17 place of business in the state and that hold promise for
18 attracting additional capital from individual or institutional
19 investors nationwide for businesses in the state; and

20 (e) 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 (15 USCA Section
23 77(b)), and rules and regulations promulgated pursuant to that
24 section, or federally recognized Indian tribes, nations and
25 pueblos with at least five million dollars (\$5,000,000) in

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1 overall investment assets.

2 E. The state investment officer is authorized to
3 make investments in New Mexico businesses to create new job
4 opportunities and to support new, emerging or expanding
5 businesses in a manner consistent with the constitution of New
6 Mexico if:

7 (1) the investments are made:

8 (a) in conjunction with cooperative
9 investment agreements with parties that have demonstrated
10 abilities and relationships in making investments in new,
11 emerging or expanding businesses; or

12 (b) in New Mexico aerospace businesses
13 that have received an award from the United States government
14 or one of its agencies or instrumentalities: 1) in an amount,
15 not less than one hundred million dollars (\$100,000,000), that
16 is equal to at least ten times the investment from the
17 severance tax permanent fund; and 2) for the purpose of
18 stimulating commercial enterprises;

19 (2) an investment in any one business does not
20 exceed ten percent of the amount available for investment
21 pursuant to this section; and

22 (3) the investments represent no more than
23 fifty-one percent of the total investment capital in a
24 business; provided, however, that nothing in this subsection
25 prohibits the ownership of more than fifty-one percent of the

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1 total investment capital in a New Mexico business if the
2 additional ownership interest:

3 (a) is due to foreclosure or other
4 action by the state investment officer pursuant to agreements
5 with the business or other investors in that business;

6 (b) is necessary to protect the
7 investment; and

8 (c) does not require an additional
9 investment of the severance tax permanent fund.

10 F. The state investment officer shall make a
11 commitment to the small business investment corporation
12 pursuant to the Small Business Investment Act to invest [~~one~~]
13 two percent of the market value of the severance tax permanent
14 fund to create new job opportunities by providing capital for
15 land, buildings or infrastructure for facilities to support new
16 or expanding businesses and to otherwise make investments to
17 create new job opportunities to support new or expanding
18 businesses in a manner consistent with the constitution of New
19 Mexico. On July 1 of each year, the state investment officer
20 shall determine whether the invested capital in the small
21 business investment corporation is less than [~~one~~] two percent
22 of the market value of the severance tax permanent fund. If
23 the invested capital in the small business investment
24 corporation equals less than [~~one~~] two percent of the market
25 value of the severance tax permanent fund, further commitments

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1 shall be made until the invested capital is equal to [~~one~~] two
2 percent of the market value of the fund.

3 G. The state investment officer shall report
4 semiannually on the New Mexico private equity investments made
5 pursuant to this section. Annually, a report shall be
6 submitted to the legislature prior to the beginning of each
7 regular legislative session and a second report no later than
8 October 1 each year to the legislative finance committee, the
9 revenue stabilization and tax policy committee and any other
10 appropriate interim committee. Each report shall provide the
11 amounts invested in each New Mexico private equity fund, as
12 well as information about the objectives of the funds, the
13 companies in which each fund is invested and how each
14 investment enhances the economic development objectives of
15 the state. Each report shall provide the amounts invested in
16 each New Mexico business."

17 SECTION 2. Section 58-29-7 NMSA 1978 (being Laws 2003,
18 Chapter 399, Section 10) is amended to read:

19 "58-29-7. RETURN TO SEVERANCE TAX PERMANENT FUND.--

20 A. Annually, no later than thirty days after the
21 delivery of its annual report to the governor and the
22 legislative finance committee, the corporation shall return
23 to the severance tax permanent fund an amount equal to the
24 net excess of funds held by the corporation. For purposes of
25 this section, "net excess of funds" means the return on

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1 investments to the corporation in the amount of dividends and
2 interest actually received plus any capital gains actually
3 realized, less the operating expenses of the corporation and
4 less amounts reasonably reserved for losses.

5 B. Money allocated to the corporation for
6 investment that is not committed within three years of the
7 allocation shall revert to the severance tax permanent fund."

8 SECTION 3. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is July 1, 2012.

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