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SENATE BILL 357

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

INTRODUCED BY

George K. Munoz

AN ACT

RELATING TO TAXATION; INCREASING THE COMMITMENT TO THE SMALL  
BUSINESS INVESTMENT CORPORATION TO INVEST IN ECONOMIC  
DEVELOPMENT; 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 percent of the market value of  
the severance tax permanent fund may be invested in New Mexico  
private equity funds or New Mexico businesses under this

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1 section.

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

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

12 D. As used in this section:

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

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

24 (a) has as its primary business activity  
25 the investment of funds in return for equity in or debt of

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1 businesses for the purpose of providing capital for start-up,  
2 expansion, product or market development, recapitalization or  
3 similar business purposes;

4 (b) holds out the prospects for capital  
5 appreciation from such investments;

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

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

18 (e) accepts investments only from  
19 accredited investors as that term is defined in Section 2 of  
20 the federal Securities Act of 1933, as amended (15 USCA Section  
21 77(b)), and rules and regulations promulgated pursuant to that  
22 section, or federally recognized Indian tribes, nations and  
23 pueblos with at least five million dollars (\$5,000,000) in  
24 overall investment assets.

25 E. The state investment officer is authorized to

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1 make investments in New Mexico businesses to create new job  
2 opportunities and to support new, emerging or expanding  
3 businesses in a manner consistent with the constitution of New  
4 Mexico if:

5 (1) the investments are made:

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

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

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

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

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

4 (b) is necessary to protect the  
5 investment; and

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

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

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1 value of the fund.

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

16 SECTION 2. EFFECTIVE DATE.--The effective date of the  
17 provisions of this act is July 1, 2013.