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AN ACT

RELATING TO PUBLIC FINANCES; CHANGING THE DEFINITION OF "NEW MEXICO PRIVATE EQUITY FUND".

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

SECTION 1. Section 7-27-5.14 NMSA 1978 (being Laws 1990, Chapter 126, Section 4, as amended) is amended to read:

"7-27-5.14. FINDINGS AND PURPOSE.--The legislature finds that the health of the New Mexico economy is heavily dependent on the establishment and expansion of small businesses and that the lack of available private equity is an impediment to the start-up and growth of businesses in the state. The legislature further finds that the commercialization of technology conceived in the universities and the federal scientific and engineering laboratories and test facilities in the state is likely to occur elsewhere unless sources of local private equity are developed. The purpose of Section 7-27-5.15 NMSA 1978 is to provide a mechanism whereby the establishment of private equity funds, whose investment policies are supportive of the economic welfare of New Mexico, will be stimulated."

SECTION 2. Section 7-27-5.15 NMSA 1978 (being Laws 1990, Chapter 126, Section 5, as amended) is amended to read:

1 "7-27-5.15. NEW MEXICO PRIVATE EQUITY FUNDS AND
2 NEW MEXICO BUSINESS INVESTMENTS.--

3 A. No more than nine percent of the market value
4 of the severance tax permanent fund may be invested in
5 New Mexico private equity funds or New Mexico businesses
6 under this section.

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

12 C. The state investment officer shall make
13 investments pursuant to Subsection A of this section only
14 upon approval of the council and within guidelines and
15 policies established by the council.

16 D. As used in this section:

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

23 (2) "New Mexico private equity fund" means
24 an entity that makes, manages or sources potential
25 investments in New Mexico businesses and that:

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

12 (d) is committed to investing or helps
13 secure investing by others, in an amount at least equal to
14 the total investment made by the state investment officer in
15 that fund pursuant to this section, in businesses with a
16 principal place of business in New Mexico and that hold
17 promise for attracting additional capital from individual or
18 institutional investors nationwide for businesses in
19 New Mexico; 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
23 Section 77(b)), and rules and regulations promulgated
24 pursuant to that section, or federally recognized Indian
25 tribes, nations and pueblos with at least five million

1 dollars (\$5,000,000) in 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
6 New 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;

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

19 (c) in a New Mexico business that:

20 1) is established to perform technology transfer, research
21 and development, research commercialization, manufacturing,
22 training, marketing or public relations in any field of
23 science or technology, including but not limited to energy,
24 security, defense, aerospace, automotives, electronics,
25 telecommunications, computer and information science,

1 environmental science, biomedical science, life science,
2 physical science, materials science or nanoscience, using
3 research developed in whole or in part by a state institution
4 of higher education or a prime contractor designated as a
5 national laboratory by an act of congress that is operating a
6 facility in the state, or an affiliated entity; and 2) has an
7 agreement to operate the business on state lands;

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

11 (3) the investments represent no more than
12 fifty-one percent of the total investment capital in a
13 business; provided, however, that nothing in this subsection
14 prohibits the ownership of more than fifty-one percent of the
15 total investment capital in a New Mexico business if the
16 additional ownership interest:

17 (a) is due to foreclosure or other
18 action by the state investment officer pursuant to agreements
19 with the business or other investors in that business;

20 (b) is necessary to protect the
21 investment; and

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

24 F. The state investment officer shall make a
25 commitment to the small business investment corporation

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

17 G. The state investment officer shall report
18 semiannually on the investments made pursuant to this
19 section. Annually, a report shall be submitted to the
20 legislature prior to the beginning of each regular
21 legislative session and a second report no later than
22 October 1 each year to the legislative finance committee, the
23 revenue stabilization and tax policy committee and any other
24 appropriate interim committee. Each report shall provide the
25 amounts invested in each New Mexico private equity fund, as

1 well as information about the objectives of the funds, the
2 companies in which each private equity fund is invested and
3 how each private equity investment enhances the economic
4 development objectives of the state. Each report also
5 shall provide the amounts invested in each New Mexico
6 business."

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