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SENATE BILL 201

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,  
2000**

INTRODUCED BY

Don Kidd

FOR THE ECONOMIC AND RURAL DEVELOPMENT AND  
TELECOMMUNICATIONS COMMITTEE

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; PROVIDING FOR INVESTMENT OF  
SEVERANCE TAX REVENUES IN SMALL BUSINESS EQUITY; ENACTING THE  
SMALL BUSINESS INVESTMENT ACT; CREATING THE SMALL BUSINESS  
INVESTMENT CORPORATION; AMENDING AND ENACTING SECTIONS OF THE  
NMSA 1978.

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

Section 1. Section 7-27-1 NMSA 1978 (being Laws 1961,  
Chapter 5, Section 2) is amended to read:

"7-27-1. SHORT TITLE.--~~[This act]~~ Sections 7-27-1  
through 7-27-27 NMSA 1978 may be cited as the "Severance Tax  
Bonding Act"."

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

"7-27-5.15. NEW MEXICO VENTURE CAPITAL FUND AND SMALL  
BUSINESS INVESTMENTS.--

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1           A. No more than ~~[one]~~ three-fourths of one percent  
2 of the market value of the severance tax permanent fund may  
3 be invested in New Mexico venture capital funds under this  
4 section.

5           B. If an investment is made under Subsection A of  
6 this section, not more than seven million five hundred  
7 thousand dollars (\$7,500,000) of the amount authorized for  
8 investment pursuant to Subsection A of this section shall be  
9 invested in any one New Mexico venture capital fund. The  
10 amount invested in any one New Mexico venture capital fund  
11 shall not exceed fifty percent of the committed capital of  
12 that fund.

13           C. In making investments pursuant to Subsection A  
14 of this section, the council shall give consideration to  
15 investments in New Mexico venture capital funds whose  
16 investments enhance the economic development objectives of  
17 the state.

18           D. The state investment officer shall make  
19 investments pursuant to Subsection A of this section only  
20 upon approval of the council and upon review of the  
21 recommendation of the venture capital investment advisory  
22 committee. The state investment officer is authorized to  
23 make investments pursuant to Subsection A of this section  
24 contingent upon a New Mexico venture capital fund securing  
25 paid-in investments from other accredited investors for the  
balance of the minimum committed capital of the fund.

E. As used in this section:

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1 (1) "committed capital" means the sum of the  
2 fixed amounts of money which accredited investors have  
3 obligated for investment in a New Mexico venture capital fund  
4 and which fixed amounts may be invested in that fund on one  
5 or more payments over time; and

6 (2) "New Mexico venture capital fund" means  
7 any limited partnership, limited liability company or  
8 corporation organized and operating in the United States and  
9 maintaining an office staffed by a full-time investment  
10 officer in New Mexico that:

11 (a) has as its primary business  
12 activity the investment of funds in return for equity in  
13 businesses for the purpose of providing capital for start-up,  
14 expansion, product or market development or similar business  
15 purposes;

16 (b) holds out the prospects for capital  
17 appreciation from such investments;

18 (c) has a minimum committed capital of  
19 five million dollars (\$5,000,000);

20 (d) has at least one full-time manager  
21 with at least three years of professional experience in  
22 assessing the growth prospects of businesses or evaluating  
23 business plans and who has established permanent residency in  
24 the state;

25 (e) is committed to investing or helps  
secure investing by others in an amount at least equal to the  
total investment made by the state investment officer in that

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1 fund pursuant to this section, in businesses with a principal  
2 place of business in the state and that hold promise for  
3 attracting additional capital from individual or  
4 institutional investors nationwide for businesses in the  
5 state; and

6 (f) accepts investments only from  
7 accredited investors as that term is defined in Section 2 of  
8 the federal Securities Act of 1933, as amended, (15 U.S.C.  
9 Section 77(b)) and rules and regulations promulgated pursuant  
10 to that section.

11 F. The state investment officer shall make a  
12 commitment to the small business investment corporation  
13 pursuant to the Small Business Investment Act to invest one-  
14 fourth of one percent of the market value of the severance  
15 tax permanent fund by July 1, 2001 to create new job  
16 opportunities by providing land, buildings or infrastructure  
17 for facilities to support new or expanding businesses. If  
18 invested capital in the small business investment corporation  
19 should at any time fall below one-fourth of one percent of  
20 the market value of the severance tax permanent fund, further  
21 commitments shall be made until the invested capital is equal  
22 to one-fourth of one percent of the market value of the  
23 fund."

24 Section 3. [NEW MATERIAL] SHORT TITLE.--Sections 3  
25 through 8 of this act may be cited as the "Small Business  
Investment Act".

Section 4. [NEW MATERIAL] PURPOSE.--The purpose of the

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1 Small Business Investment Act is to implement Article 9,  
2 Section 14 of the constitution of New Mexico to create new  
3 job opportunities by providing land, buildings or  
4 infrastructure for facilities to support new or expanding  
5 businesses.

6 Section 5. [NEW MATERIAL] DEFINITIONS.--As used in the  
7 Small Business Investment Act:

8 A. "board" means the small business investment  
9 corporation's board;

10 B. "corporation" means the small business  
11 investment corporation; and

12 C. "president" means the president of the  
13 corporation.

14 Section 6. [NEW MATERIAL] SMALL BUSINESS INVESTMENT  
15 CORPORATION CREATED--POWERS OF THE CORPORATION.--

16 A. The "small business investment corporation" is  
17 created as a nonprofit, independent, public corporation for  
18 the purpose of creating new job opportunities by making  
19 equity investments in land, buildings or infrastructure for  
20 facilities to support new or expanding businesses. The  
21 corporation may:

22 (1) make equity investments in New Mexico  
23 small businesses that:

24 (a) have rural development business and  
25 industrial loans approved by the United States small business  
administration or the United States department of  
agriculture;

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1 (b) are no more than forty-nine percent  
2 of the total capital equity of a business; and

3 (c) pay an annual dividend to the  
4 severance tax permanent fund of not less than five percent of  
5 the original capital equity investment by the corporation in  
6 the small business;

7 (2) hold redeemable preferred stock of a  
8 small business for a fixed period of time not to exceed ten  
9 years and have rural development business and industrial  
10 loans approved by the United States small business  
11 administration or the United States department of  
12 agriculture;

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

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

19 (5) cooperate with small business development  
20 centers and regional economic development districts;

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

23 (7) make investments that consider the  
24 enhancement of economic development objectives of the state.

25 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.

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1           C. The state shall not be liable for any  
2 obligations incurred by the corporation.

3           Section 7. [NEW MATERIAL] CORPORATION BOARD OF  
4 DIRECTORS--APPOINTMENT--POWERS.--

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

- 7                   (1) the president of the board;
- 8                   (2) the state treasurer;
- 9                   (3) the state investment officer;
- 10                   (4) the president of the New Mexico bankers  
11 association;

12                   (5) the president of the New Mexico  
13 independent community bankers association;

14                   (6) the director of the New Mexico district  
15 of the United States small business administration; and

16                   (7) four members appointed or elected as  
17 provided in this section.

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

21           C. The governor shall appoint, with the consent of  
22 the senate, the initial four public directors of the board,  
23 and the full board shall then elect the president.

24           D. After the governor appoints the initial four  
25 public directors of the board, those directors shall  
determine by lot their initial terms, which shall be two  
directors for two years and two directors for four years.

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1       Thereafter, each public member director shall be appointed or  
2       elected to a four-year term. At the expiration of the terms  
3       of the two initial directors whose terms are two years, the  
4       governor shall appoint one director and the board shall elect  
5       one director for full four-year terms. At the expiration of  
6       the terms of the two initial directors whose terms are four  
7       years, the governor shall appoint one director and the board  
8       shall elect one director for full four-year terms.

9       Thereafter, as vacancies arise, public member directors shall  
10      be appointed or elected so that at all times two shall be  
11      appointed by the governor and two shall be elected by the  
12      board in accordance with provisions determined by the board.

13               E. The governor shall not remove a director he  
14      appoints unless the removal is approved by a two-thirds' vote  
15      of the members of the senate.

16               F. The governor's appointees to the board shall be  
17      public members who have general expertise in small business  
18      management, but they shall not be employed by or represent  
19      small businesses receiving equity investments from the  
20      corporation.

21               G. No two members of the board shall be employed  
22      by or represent the same company or institution.

23               H. The board shall annually elect a chairman from  
24      among its members and shall elect those other officers it  
25      determines necessary for the performance of its duties.

              I. The power to set the policies and procedures  
for the corporation is vested in the board. The board may



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1 perform all acts necessary or appropriate to exercise that  
2 power.

3 J. Public members of the board shall be reimbursed  
4 for attending meetings of the board as provided in the Per  
5 Diem and Mileage Act and shall receive no other compensation,  
6 perquisite or allowance.

7 K. Public members of the board are appointed  
8 public officials of the state while carrying out their duties  
9 and activities under the Small Business Investment Act. The  
10 directors and the employees of the corporation are not liable  
11 personally, either jointly or severally, for any debt or  
12 obligation created or incurred by the corporation or for any  
13 act performed or obligation entered into in an official  
14 capacity when done in good faith, without intent to defraud  
15 and in connection with the administration, management or  
16 conduct of the corporation or affairs relating to it.

17 L. The board shall conduct an annual audit of the  
18 books of accounts, funds and securities of the corporation to  
19 be made by a competent and independent firm of certified  
20 public accountants. A copy of the audit report shall be  
21 filed with the president. The audit shall be open to the  
22 public for inspection.

23 Section 8. [NEW MATERIAL] PRESIDENT--POWERS AND  
24 DUTIES.--

25 A. The corporation is under the administrative  
control of the president. The board shall periodically  
review and appraise the investment strategy being followed,

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1 and the president shall report at least once a month to the  
2 board on investment results and related matters. The  
3 president shall:

4 (1) act for the corporation in collecting  
5 and disbursing money necessary to administer the corporation  
6 and conduct its business;

7 (2) sign contracts and incur obligations on  
8 behalf of the corporation;

9 (3) perform all acts necessary to exercise  
10 power, authority or jurisdiction over the corporation to  
11 discharge its functions and fulfill its responsibilities; and

12 (4) make investments pursuant to the Small  
13 Business Investment Act and upon approval of the board.

14 B. The president shall submit an annual report,  
15 independently audited in accordance with generally accepted  
16 procedures governing annual reports, by October 1 of each  
17 year to the governor, the legislative finance committee and  
18 any other appropriate legislative committee indicating the  
19 business done by the corporation during the previously  
20 completed fiscal year and containing a statement of the  
21 resources and liabilities of the corporation. The report  
22 shall include:

23 (1) the average rate of return enjoyed by  
24 the corporation on invested assets;

25 (2) recommendations concerning desired  
changes in the corporation to promote its prompt and  
efficient administration of policies and claims;

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1 (3) recommendations to the legislature and  
2 the governor regarding the continued operation of the  
3 corporation; and

4 (4) any other information the president  
5 deems appropriate.

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