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SENATE BILL 10

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

Carlos R. Cisneros

AN ACT

RELATING TO THE SEVERANCE TAX PERMANENT FUND; INCREASING  
INVESTMENT IN SMALL BUSINESSES.

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) is amended to read:

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

B. In making investments pursuant to Subsection A  
of this section, the council shall make investments in New  
Mexico private equity funds or New Mexico businesses whose

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1 investments or enterprises enhance the economic development  
2 objectives of the state.

3 C. The state investment officer shall make  
4 investments pursuant to Subsection A of this section only upon  
5 approval of the council and within guidelines and policies  
6 established by the council.

7 D. As used in this section:

8 (1) "New Mexico business" means, in the case  
9 of a corporation or limited liability company, a business with  
10 its principal office and a majority of its full-time employees  
11 located in New Mexico or, in the case of a limited partnership,  
12 a business with its principal place of business and eighty  
13 percent of its assets located in New Mexico; and

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

17 (a) has as its primary business activity  
18 the investment of funds in return for equity in or debt of  
19 businesses for the purpose of providing capital for start-up,  
20 expansion, product or market development, recapitalization or  
21 similar business purposes;

22 (b) holds out the prospects for capital  
23 appreciation from such investments;

24 (c) has at least one full-time manager  
25 with at least three years of professional experience in

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1 assessing the growth prospects of businesses or evaluating  
2 business plans;

3 (d) is committed to investing or helps  
4 secure investing by others, in an amount at least equal to the  
5 total investment made by the state investment officer in that  
6 fund pursuant to this section, in businesses with a principal  
7 place of business in New Mexico and that hold promise for  
8 attracting additional capital from individual or institutional  
9 investors nationwide for businesses in New Mexico; and

10 (e) accepts investments only from  
11 accredited investors as that term is defined in Section 2 of  
12 the federal Securities Act of 1933, as amended (15 USCA Section  
13 77(b)), and rules and regulations promulgated pursuant to that  
14 section, or federally recognized Indian tribes, nations and  
15 pueblos with at least five million dollars (\$5,000,000) in  
16 overall investment assets.

17 E. The state investment officer is authorized to  
18 make investments in New Mexico businesses to create new job  
19 opportunities and to support new, emerging or expanding  
20 businesses in a manner consistent with the constitution of New  
21 Mexico if:

22 (1) the investments are made:

23 (a) in conjunction with cooperative  
24 investment agreements with parties that have demonstrated  
25 abilities and relationships in making investments in new,

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1 emerging or expanding businesses;

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

9 (c) in a New Mexico business that: 1)  
10 is established to perform technology transfer, research and  
11 development, research commercialization, manufacturing,  
12 training, marketing or public relations in any field of science  
13 or technology, including but not limited to energy, security,  
14 defense, aerospace, automotives, electronics,  
15 telecommunications, computer and information science,  
16 environmental science, biomedical science, life science,  
17 physical science, materials science or nanoscience, using  
18 research developed in whole or in part by a state institution  
19 of higher education or a prime contractor designated as a  
20 national laboratory by an act of congress that is operating a  
21 facility in the state, or an affiliated entity; and 2) has an  
22 agreement to operate the business on state lands;

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

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1 (3) the investments represent no more than  
2 fifty-one percent of the total investment capital in a  
3 business; provided, however, that nothing in this subsection  
4 prohibits the ownership of more than fifty-one percent of the  
5 total investment capital in a New Mexico business if the  
6 additional ownership interest:

7 (a) is due to foreclosure or other  
8 action by the state investment officer pursuant to agreements  
9 with the business or other investors in that business;

10 (b) is necessary to protect the  
11 investment; and

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

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

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1 of the market value of the severance tax permanent fund. If  
2 the invested capital in the small business investment  
3 corporation equals less than ~~[one]~~ two percent of the market  
4 value of the severance tax permanent fund, further commitments  
5 shall be made until the invested capital is equal to ~~[one]~~ two  
6 percent of the market value of the fund.

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