

AN ACT

RELATING TO FINANCIAL INSTITUTIONS; AMENDING THE SMALL BUSINESS INVESTMENT ACT; PROVIDING FOR ALTERNATIVE COLLATERALIZATION OF INVESTMENTS; PROVIDING FOR DESIGNEES TO THE BOARD; PROVIDING FOR ADMINISTRATION OF THE SMALL BUSINESS INVESTMENT CORPORATION.

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

Section 1. Section 58-29-4 NMSA 1978 (being Laws 2000, Chapter 97, Section 6) is amended to read:

"58-29-4. SMALL BUSINESS INVESTMENT CORPORATION
CREATED-- POWERS OF THE CORPORATION. --

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

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

(a) have rural development business and industrial loans approved by the United States small business administration or the United States department of agriculture or indebtedness otherwise collateralized to the satisfaction of the board;

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

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

(2) hold redeemable preferred stock of a small business for a fixed period of time not to exceed ten years and have rural development business and industrial loans approved by the United States small business administration or the United States department of agriculture or indebtedness otherwise collateralized to the satisfaction of the board;

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

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

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

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

(7) make investments that consider the

enhancement of economic development objectives of the state.

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.

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

Section 2. Section 58-29-5 NMSA 1978 (being Laws 2000, Chapter 97, Section 7) is amended to read:

"58-29-5. CORPORATION BOARD OF DIRECTORS-- APPOINTMENT-- POWERS. --

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

- (1) the state treasurer or his designee;
- (2) the state investment officer or his designee;
- (3) the president of the New Mexico bankers association or his designee;
- (4) the president of the New Mexico independent community bankers association or his designee;
- (5) as a non-voting member, the director of the New Mexico district of the United States small business administration or his designee; and
- (6) four members appointed or elected as provided in this section.

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

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

D. After the governor appoints the initial four 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. Thereafter, each public member director shall be appointed or elected to a four-year term. At the expiration of the terms of the two initial directors whose terms are two years, the governor shall appoint one director and the board shall elect one director for full four-year terms. At the expiration of the terms of the two initial directors whose terms are four years, the governor shall appoint one director and the board shall elect one director for full four-year terms.

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

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

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

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

H. The board shall annually elect a chairman from among its members and shall elect those other officers it 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 perform all acts necessary or appropriate to exercise that power.

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

K. Public members of the board are appointed public officials of the state while carrying out their duties and activities under the Small Business Investment Act. The directors and the employees of the corporation are not liable personally, either jointly or severally, for any debt or obligation created or incurred by the corporation or for any act performed or obligation entered into in an official

capacity when done in good faith, without intent to defraud and in connection with the administration, management or conduct of the corporation or affairs relating to it.

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

Section 3. Section 58-29-6 NMSA 1978 (being Laws 2000, Chapter 97, Section 8) is amended to read:

"58-29-6. PRESIDENT-- POWERS AND DUTIES. --

A. The board shall select a president of the corporation from among its members. The corporation is under the administrative control of the president or a person selected by the board to administer the operations of the corporation. The board shall periodically review and appraise the investment strategy being followed, and the president shall report at least once a month to the board on investment results and related matters. The president shall:

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

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

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

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

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

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

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

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

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