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HOUSE BILL 546

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Robert M Burpo

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**

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1 facilities to support new or expanding businesses. The
2 corporation may:

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

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

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

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

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

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

25 (4) enter into any contracts or obligations

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1 relating to the corporation that are authorized or permitted
2 by law;

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

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

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

9 B. The corporation shall not be considered a state
10 agency for any purpose. The corporation is exempted from the
11 provisions of the Personnel Act and the Procurement Code.

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

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

16 "58-29-5. CORPORATION BOARD OF DIRECTORS--APPOINTMENT--
17 POWERS.--

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

20 [~~(1)~~] ~~the president of the board;~~

21 ~~(2)~~] (1) the state treasurer or his designee;

22 [~~(3)~~] (2) the state investment officer or his
23 designee;

24 [~~(4)~~] (3) the president of the New Mexico
25 bankers association or his designee;

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1 [~~(5)~~] (4) the president of the New Mexico
2 independent community bankers association or his designee;

3 [~~(6)~~] (5) as a non-voting member, the
4 director of the New Mexico district of the United States small
5 business administration or his designee; and

6 [~~(7)~~] (6) four members appointed or elected
7 as provided in this section.

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

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

14 D. After the governor appoints the initial four
15 public directors of the board, those directors shall determine
16 by lot their initial terms, which shall be two directors for
17 two years and two directors for four years. Thereafter, each
18 public member director shall be appointed or elected to a
19 four-year term. At the expiration of the terms of the two
20 initial directors whose terms are two years, the governor
21 shall appoint one director and the board shall elect one
22 director for full four-year terms. At the expiration of the
23 terms of the two initial directors whose terms are four years,
24 the governor shall appoint one director and the board shall
25 elect one director for full four-year terms. Thereafter, as

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

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

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

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

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

18 I. The power to set the policies and procedures
19 for the corporation is vested in the board. The board may
20 perform all acts necessary or appropriate to exercise that
21 power.

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

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

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

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

19 "58-29-6. PRESIDENT-- POWERS AND DUTIES. --

20 A. The board shall select a president of the
21 corporation from among its members. The corporation is under
22 the administrative control of the president or a person
23 selected by the board to administer the operations of the
24 corporation. The board shall periodically review and appraise
25 the investment strategy being followed, and the president

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

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

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

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

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

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

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

24 (2) recommendations concerning desired
25 changes in the corporation to promote its prompt and efficient

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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. "