

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; ADOPTING INVESTMENT
ALLOCATIONS AND DEFINITIONS RELATED TO THE NEW MEXICO SMALL
BUSINESS INVESTMENT COUNCIL.

H
B
3
8
7
P
a
g
e
1

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 by Laws 2003, Chapter 399, Section 2 and by Laws 2003, Chapter 401, Section 1 and also by Laws 2003, Chapter 406, Section 1) is amended to read:

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

A. No more than six 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 investments or enterprises enhance the economic development objectives of the state.

C. The state investment officer shall make investments pursuant to Subsection A of this section only upon approval of the council, upon review of the recommendation of the private equity investment advisory committee and within guidelines and policies established by the council.

D. As used in this section:

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

(2) "New Mexico private equity fund" means a limited partnership, limited liability company or corporation organized and operating in the United States and maintaining an office staffed by a full-time investment officer in New Mexico that:

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

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

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

(d) 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 fund pursuant to this section, in businesses with a principal place of business in the state and that hold promise for attracting additional capital from individual or institutional investors nationwide for businesses in the state; and

H
B
3
8
7
P
a
g
e
2

(e) accepts investments only from accredited investors as that term is defined in Section 2 of the federal Securities Act of 1933, as amended (15 USCA Section 77(b)), and rules and regulations promulgated pursuant to that section.

H
B
3
8
7
P
a
g
e
3

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

(1) the investments are made in conjunction with cooperative investment agreements with parties that have demonstrated abilities and relationships in making investments in new, emerging or expanding businesses;

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

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

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

(b) is necessary to protect the investment; and

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

F. The state investment officer shall make a commitment to the small

business investment corporation pursuant to the Small Business Investment Act to invest one-half percent of the market value of the severance tax permanent fund by July 1, 2001 to create new job opportunities by providing capital for land, buildings or infrastructure for facilities to support new or expanding businesses and to otherwise make investments to create new job opportunities to support new or expanding businesses in a manner consistent with the constitution of New Mexico. On July 1, 2003 and on each July 1 thereafter, the state investment officer shall determine whether the invested capital in the small business investment corporation is less than one-half percent of the market value of the severance tax permanent fund. If the invested capital in the small business investment corporation equals less than one-half percent of the market value of the severance tax permanent fund, further commitments shall be made until the invested capital is equal to one-half percent of the market value of the fund.

H
B
3
8
7
P
a
g
e
4

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

Section 2. Section 58-29-3 NMSA 1978 (being Laws 2000, Chapter 97,

Section 5, as amended) is amended to read:

H
B
3
8
7
P
a
g
e
5

"58-29-3. DEFINITIONS.--As used in the Small Business Investment Act:

A. "board" means the corporation's board;

B. "cooperative agreement" means an agreement entered into by the corporation with a party that:

(1) has demonstrated the capability to provide business assistance to new and expanding businesses; and

(2) is primarily engaged or proposes to primarily engage in the business of providing business services and debt or equity capital to new and expanding businesses;

C. "corporation" means the small business investment corporation;

D. "debt investment" means direct or indirect loans or other debt obligations, the proceeds of which shall be used to:

(1) support the acquisition or development of land, buildings or infrastructure;

(2) create job opportunities; or

(3) otherwise enhance the economic development objectives of the state;

E. "equity investment" means direct or indirect ownership interests in New Mexico businesses, the proceeds of which investment shall be used to:

(1) support the acquisition or development of land, buildings or infrastructure;

(2) create job opportunities; or

(3) otherwise enhance the economic development objectives

of the state;

H
B

F. "fund" means the small business investment corporation fund;

3

G. "New Mexico business" means a business with its principal office and a majority of its full-time employees located in New Mexico, including a sole proprietorship, partnership, limited partnership, limited liability company or corporation; and

8

7

P

a

g

e

H. "president" means the president of the corporation."

6

Section 3. Section 58-29-5.1 NMSA 1978 (being Laws 2003, Chapter 399, Section 9) is amended to read:

"58-29-5.1. PERMITTED INVESTMENTS.--The corporation may:

A. make equity investments in New Mexico businesses, provided that:

(1) the investments are made pursuant to cooperative agreements;

(2) an equity investment in any one business may not exceed ten percent of the fund; provided, however, that the restrictions of this paragraph shall not apply to equity investments in entities that are parties to cooperative agreements, but shall apply to investments made by such entities pursuant to cooperative agreements; and

(3) the investments represent no more than forty-nine percent of the total equity capital of a business; provided, however, that the restrictions of this paragraph shall not apply to equity investments in entities that are parties to cooperative agreements, but shall apply to investments made by such entities pursuant to cooperative agreements; or

B. make debt investments in New Mexico businesses, provided that:

(1) the investments are made pursuant to cooperative agreements; and

(2) a debt investment in any one business may not exceed ten percent of the fund; provided, however, that the restrictions of this paragraph shall not apply to debt investments in entities that are parties to cooperative agreements, but shall apply to debt investments made by such entities pursuant to cooperative agreements."