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HOUSE BILL 466

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Nick L. Salazar

AN ACT

**RELATING TO ECONOMIC DEVELOPMENT; INCREASING THE PERCENTAGE OF
THE SEVERANCE TAX PERMANENT FUND INVESTED IN THE SMALL BUSINESS
INVESTMENT CORPORATION; AMENDING A SECTION OF THE NMSA 1978.**

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 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**

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1 Mexico private equity funds or New Mexico businesses whose
2 investments or enterprises enhance the economic development
3 objectives of the state.

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

9 D. As used in this section:

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

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

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

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

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

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

15 (e) accepts investments only from
16 accredited investors as that term is defined in Section 2 of
17 the federal Securities Act of 1933, as amended (15 USCA Section
18 77(b)), and rules and regulations promulgated pursuant to that
19 section.

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

25 (1) the investments are made in conjunction

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1 with cooperative investment agreements with parties that have
2 demonstrated abilities and relationships in making investments
3 in new, emerging or expanding businesses;

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

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

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

16 (b) is necessary to protect the
17 investment; and

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

20 F. The state investment officer shall make a
21 commitment to the small business investment corporation
22 pursuant to the Small Business Investment Act to invest [~~one-~~
23 ~~half~~] three-fourths percent of the market value of the
24 severance tax permanent fund [~~by July 1, 2001~~] to create new
25 job opportunities by providing capital for land, buildings or

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1 infrastructure for facilities to support new or expanding
2 businesses and to otherwise make investments to create new job
3 opportunities to support new or expanding businesses in a
4 manner consistent with the constitution of New Mexico. On July
5 1 [~~2003 and on each July 1 thereafter~~] of each year, the state
6 investment officer shall determine whether the invested capital
7 in the small business investment corporation is less than [~~one-~~
8 ~~half~~] three-fourths percent of the market value of the
9 severance tax permanent fund. If the invested capital in the
10 small business investment corporation equals less than [~~one-~~
11 ~~half~~] three-fourths percent of the market value of the
12 severance tax permanent fund, further commitments shall be made
13 until the invested capital is equal to [~~one-half~~] three-fourths
14 percent of the market value of the fund.

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

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1 investment enhances the economic development objectives of the
2 state. Each report shall provide the amounts invested in each
3 New Mexico business. "

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