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HOUSE BILL 401

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Carl Trujillo

AN ACT

RELATING TO PUBLIC FINANCES; PERMITTING THE STATE INVESTMENT COUNCIL TO INVEST IN NEW MEXICO BUSINESSES THAT PERFORM TECHNOLOGY TRANSFER, RESEARCH AND DEVELOPMENT, RESEARCH COMMERCIALIZATION, MANUFACTURING, TRAINING, MARKETING OR PUBLIC RELATIONS IN THE FIELDS OF SCIENCE AND TECHNOLOGY ON STATE LANDS; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2007.

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 2007, Chapter 355, Section 1 and by Laws 2007, Chapter 359, Section 1 and also by Laws 2007, Chapter 360, Section 1) is amended to read:

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

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1 A. No more than nine percent of the market value of
2 the severance tax permanent fund may be invested in New Mexico
3 private equity funds or New Mexico businesses under this
4 section.

5 B. In making investments pursuant to Subsection A
6 of this section, the council shall make investments in New
7 Mexico private equity funds or New Mexico businesses whose
8 investments or enterprises enhance the economic development
9 objectives of the state.

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

15 D. As used in this section:

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

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

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1 that:

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

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

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

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

21 (e) accepts investments only from
22 accredited investors as that term is defined in Section 2 of
23 the federal Securities Act of 1933, as amended (15 USCA Section
24 77(b)), and rules and regulations promulgated pursuant to that
25 section, or federally recognized Indian tribes, nations and

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1 pueblos with at least five million dollars (\$5,000,000) in
2 overall investment assets.

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

8 (1) the investments are made:

9 (a) in conjunction with cooperative
10 investment agreements with parties that have demonstrated
11 abilities and relationships in making investments in new,
12 emerging or expanding businesses; ~~[or]~~

13 (b) in a New Mexico aerospace
14 ~~[businesses]~~ business that ~~[have]~~ has received an award from
15 the United States government or one of its agencies or
16 instrumentalities: 1) in an amount, not less than one hundred
17 million dollars (\$100,000,000), that is equal to at least ten
18 times the investment from the severance tax permanent fund; and
19 2) for the purpose of stimulating commercial enterprises; or

20 (c) in a New Mexico business that: 1)
21 is established to perform technology transfer, research and
22 development, research commercialization, manufacturing,
23 training, marketing or public relations in any field of science
24 or technology, including but not limited to energy, security,
25 defense, aerospace, automotives, electronics,

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1 telecommunications, computer and information science,
2 environmental science, biomedical science, life science,
3 physical science, materials science or nanoscience, using
4 research developed in whole or in part by a prime contractor
5 designated as a national laboratory by an act of congress that
6 is operating a facility in the state, or an affiliated entity;
7 and 2) has an agreement to operate the business on state lands;

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

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

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

20 (b) is necessary to protect the
21 investment; and

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

24 F. The state investment officer shall make a
25 commitment to the small business investment corporation

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1 pursuant to the Small Business Investment Act to invest one
2 percent of the market value of the severance tax permanent fund
3 to create new job opportunities by providing capital for land,
4 buildings or infrastructure for facilities to support new or
5 expanding businesses and to otherwise make investments to
6 create new job opportunities to support new or expanding
7 businesses in a manner consistent with the constitution of New
8 Mexico. On July 1 of each year, the state investment officer
9 shall determine whether the invested capital in the small
10 business investment corporation is less than one percent of the
11 market value of the severance tax permanent fund. If the
12 invested capital in the small business investment corporation
13 equals less than one percent of the market value of the
14 severance tax permanent fund, further commitments shall be made
15 until the invested capital is equal to one percent of the
16 market value of the fund.

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

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1 well as information about the objectives of the funds, the
2 companies in which each fund is invested and how each
3 investment enhances the economic development objectives of
4 the state. Each report shall provide the amounts invested in
5 each New Mexico business."

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