

1 SENATE BILL 223

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 John M. Sapien

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8 ENDORSED BY THE INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

9
10 AN ACT

11 RELATING TO PUBLIC FINANCES; REPEALING THE PRIVATE EQUITY
12 INVESTMENT ADVISORY COMMITTEE; LIMITING THE TYPES OF
13 INVESTMENTS OF THE SEVERANCE TAX PERMANENT FUND; REQUIRING
14 ADDITIONAL REPORTING BY THE SMALL BUSINESS INVESTMENT
15 CORPORATION; RECONCILING MULTIPLE AMENDMENTS TO THE SAME
16 SECTION OF LAW IN LAWS 2007.

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

19 SECTION 1. Section 7-27-5.15 NMSA 1978 (being Laws 1990,
20 Chapter 126, Section 5, as amended by Laws 2007, Chapter 355,
21 Section 1 and by Laws 2007, Chapter 359, Section 1 and also by
22 Laws 2007, Chapter 360, Section 1) is amended to read:

23 "7-27-5.15. NEW MEXICO PRIVATE EQUITY FUNDS AND BUSINESS
24 INVESTMENTS.--

25 A. No more than nine percent of the market value of

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1 the severance tax permanent fund may be invested in New Mexico
2 private equity funds or New Mexico businesses under this
3 section.

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

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

14 D. As used in this section:

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

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

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

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

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

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

20 (e) accepts investments only from
21 accredited investors as that term is defined in Section 2 of
22 the federal Securities Act of 1933, as amended (15 USCA Section
23 77(b)), and rules and regulations promulgated pursuant to that
24 section, or federally recognized Indian tribes, nations and
25 pueblos with at least five million dollars (\$5,000,000) in

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1 overall investment assets.

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

7 (1) the investments are made [~~(a)~~] in
8 conjunction with cooperative investment agreements with parties
9 that have demonstrated abilities and relationships in making
10 investments in new, emerging or expanding businesses; [~~or~~

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

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

21 (3) the investments represent no more than
22 [~~fifty-one~~] forty percent of the total investment capital in a
23 business; provided, however, that nothing in this subsection
24 prohibits the ownership of more than [~~fifty-one~~] forty percent
25 of the total investment capital in a New Mexico business if the

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1 additional ownership interest:

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

5 (b) is necessary to protect the
6 investment; and

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

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

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1 market value of the fund.

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

16 SECTION 2. Section 7-27-5.26 NMSA 1978 (being Laws 2000
17 (2nd S.S.), Chapter 6, Section 2, as amended) is amended to
18 read:

19 "7-27-5.26. INVESTMENT IN FILMS TO BE PRODUCED IN NEW
20 MEXICO.--

21 A. No more than six percent of the market value
22 of the severance tax permanent fund may be invested in New
23 Mexico film private equity funds or a New Mexico film project
24 under this section.

25 B. If an investment is made under this section,

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1 not more than fifteen million dollars (\$15,000,000) of the
2 amount authorized for investment pursuant to Subsection A of
3 this section shall be invested in any one New Mexico film
4 private equity fund or any one New Mexico film project.

5 C. The state investment officer shall make
6 investments pursuant to this section only upon approval of
7 the ~~[state investment]~~ council after a review by the ~~[private~~
8 ~~equity investment advisory committee and the]~~ New Mexico film
9 division of the economic development department. The state
10 investment officer may make debt or equity investments
11 pursuant to this section only in New Mexico film projects or
12 New Mexico film private equity funds that invest only in film
13 projects that:

14 (1) are filmed wholly or substantially in
15 New Mexico;

16 (2) have shown to the satisfaction of the
17 New Mexico film division that a distribution contract is in
18 place with a reputable distribution company;

19 (3) have agreed that, while filming in New
20 Mexico, a majority of the production crew will be New Mexico
21 residents;

22 (4) have posted a completion bond that has
23 been approved by the New Mexico film division; provided that
24 a completion bond shall not be required if the fund or
25 project is guaranteed pursuant to Paragraph (5) of this

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1 subsection; and

2 (5) have obtained a full, unconditional and
3 irrevocable guarantee of repayment of the invested amount in
4 favor of the severance tax permanent fund:

5 (a) from an entity that has a credit
6 rating of not less than Baa or BBB by a national rating
7 agency;

8 (b) from a substantial subsidiary of
9 an entity that has a credit rating of not less than Baa or
10 BBB by a national rating agency;

11 (c) by providing a full, unconditional
12 and irrevocable letter of credit from a United States
13 incorporated bank with a credit rating of not less than A by
14 a national rating agency; or

15 (d) from a substantial and solvent
16 entity as determined by the [~~state investment~~] council in
17 accordance with its standards and practices; or

18 (6) if not guaranteed pursuant to Paragraph
19 (5) of this subsection, have obtained no less than one-third
20 of the estimated total production costs from other sources as
21 approved by the state investment officer.

22 D. The state investment officer may loan at a
23 market rate of interest, with respect to an eligible New
24 Mexico film project, up to eighty percent of an expected and
25 estimated film production tax credit available to a film

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1 production company pursuant to the provisions of Section
2 7-2F-1 NMSA 1978; provided that the film production company
3 agrees to name the state investment officer as its agent for
4 the purpose of filing an application for the film production
5 tax credit to which the company is entitled if the company
6 does not apply for the film production tax credit. The New
7 Mexico film division of the economic development department
8 shall determine the estimated amount of a film production tax
9 credit. The [~~state investment~~] council shall establish
10 guidelines for the state investment officer's initiation of a
11 loan and the terms of the loan.

12 E. As used in this section:

13 (1) "film project" means a single [~~media~~]
14 medium or multimedia program, including advertising messages,
15 fixed on film, videotape, computer disc, laser disc or other
16 similar delivery medium from which the program can be viewed
17 or reproduced and that is intended to be exhibited in
18 theaters; licensed for exhibition by individual television
19 stations, groups of stations, networks, cable television
20 stations or other means; or licensed for the home viewing
21 market; and

22 (2) "New Mexico film private equity fund"
23 means any limited partnership, limited liability company or
24 corporation organized and operating in the United States
25 that:

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1 (a) has as its primary business
2 activity the investment of funds in return for equity in film
3 projects produced wholly or partly in New Mexico;

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

6 (c) accepts investments only from
7 accredited investors as that term is defined in Section 2 of
8 the federal Securities Act of 1933, as amended, and rules
9 promulgated pursuant to that section."

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

12 "58-29-6. PRESIDENT--POWERS AND DUTIES.--

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

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

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

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

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

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

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

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

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

23 (4) any other information the president
24 deems appropriate.

25 C. In addition to the report required pursuant to

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1 Subsection B of this section, the president shall submit a
2 report by April 1 of each year to the state investment
3 council regarding the corporation's debt investments and
4 equity investments and the returns on those investments."

5 SECTION 4. REPEAL.--Section 6-8-20 NMSA 1978 (being
6 Laws 1987, Chapter 219, Section 3, as amended) is repealed.

7 SECTION 5. EFFECTIVE DATE.--The effective date of the
8 provisions of this act is July 1, 2013.

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