

1 SENATE BILL 544

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO PUBLIC FINANCES; ALLOWING THE STATE INVESTMENT
12 OFFICER TO TRANSFER TO THE ECONOMIC DEVELOPMENT DEPARTMENT A
13 PORTION OF THE SEVERANCE TAX PERMANENT FUND FOR INVESTMENT IN
14 CERTAIN BUSINESSES.

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16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. Section 7-27-5.15 NMSA 1978 (being Laws 1990,
18 Chapter 126, Section 5, as amended) is amended to read:

19 "7-27-5.15. NEW MEXICO PRIVATE EQUITY FUNDS AND BUSINESS
20 INVESTMENTS.--

21 A. No more than nine percent, and no less than the
22 following percentages, of the market value of the severance tax
23 permanent fund may be invested directly or indirectly in New
24 Mexico [~~private equity funds or New Mexico~~] businesses under
25 this section or transferred to the economic development

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1 department for investment in businesses pursuant to Section
2 7-27-5.27 NMSA 1978 in the following fiscal years:

3 (1) four percent in fiscal year 2015;

4 (2) five percent in fiscal year 2016;

5 (3) six percent in fiscal year 2017; and

6 (4) seven percent in fiscal year 2018 and each
7 subsequent fiscal year.

8 B. ~~[In making]~~ Investments made pursuant to
9 ~~[Subsection A of]~~ this section ~~[the council]~~ shall ~~[make~~
10 ~~investments]~~ be made by the state investment officer in New
11 Mexico private equity funds or New Mexico businesses whose
12 investments or enterprises enhance the economic development
13 objectives of the state.

14 C. ~~[The state investment officer shall make]~~
15 Investments ~~[pursuant to Subsection A of this section only]~~
16 made by the state investment officer pursuant to Subsection A
17 of this section shall be upon approval of the council, upon
18 review of the recommendation of the private equity investment
19 advisory committee and within guidelines and policies
20 established by the council. Amounts to be transferred by the
21 state investment officer to the economic development department
22 pursuant to Subsection A of this section shall be transferred
23 at the times and in the amounts necessary for investments
24 pursuant to the provisions of Section 7-27-5.27 NMSA 1978.

25 D. As used in this section:

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

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

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

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

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

24 (d) is committed to investing or helps
25 secure investing by others, in an amount at least equal to the

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1 total investment made by the state investment officer in that
2 fund pursuant to this section, in businesses with a principal
3 place of business in the state and that hold promise for
4 attracting additional capital from individual or institutional
5 investors nationwide for businesses in the state; and

6 (e) 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 (15 USCA Section
9 77(b)), and rules and regulations promulgated pursuant to that
10 section, or federally recognized Indian tribes, nations and
11 pueblos with at least five million dollars (\$5,000,000) in
12 overall investment assets.

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

18 (1) the investments are made:

19 (a) in conjunction with cooperative
20 investment agreements with parties that have demonstrated
21 abilities and relationships in making investments in new,
22 emerging or expanding businesses;

23 (b) in a New Mexico aerospace business
24 that has received an award from the United States government or
25 one of its agencies or instrumentalities: 1) in an amount, not

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1 less than one hundred million dollars (\$100,000,000), that is
2 equal to at least ten times the investment from the severance
3 tax permanent fund; and 2) for the purpose of stimulating
4 commercial enterprises; or

5 (c) in a New Mexico business that: 1)
6 is established to perform technology transfer, research and
7 development, research commercialization, manufacturing,
8 training, marketing or public relations in any field of science
9 or technology, including but not limited to energy, security,
10 defense, aerospace, automotives, electronics,
11 telecommunications, computer and information science,
12 environmental science, biomedical science, life science,
13 physical science, materials science or nanoscience, using
14 research developed in whole or in part by a state institution
15 of higher education or a prime contractor designated as a
16 national laboratory by an act of congress that is operating a
17 facility in the state, or an affiliated entity; and 2) has an
18 agreement to operate the business on state lands;

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

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

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1 total investment capital in a New Mexico business if the
2 additional ownership interest:

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

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

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

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

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1 until the invested capital is equal to one percent of the
2 market value of the fund.

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

17 SECTION 2. Section 7-27-5 NMSA 1978 (being Laws 1983,
18 Chapter 306, Section 7, as amended) is amended to read:

19 "7-27-5. INVESTMENT OF SEVERANCE TAX PERMANENT FUND.--The
20 severance tax permanent fund shall be invested in separate
21 differential rate and market rate investment classes.

22 "Differential rate investments" are permitted in Sections
23 7-27-5.3 through 7-27-5.5, 7-27-5.13 through 7-27-5.17,
24 7-27-5.22 and 7-27-5.24 through [~~7-27-5.26~~] 7-27-5.27 NMSA 1978
25 and are intended to stimulate the economy of New Mexico and to

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1 provide income to the severance tax permanent fund. "Market
2 rate investments" are investments that are not differential
3 rate investments and are intended to provide income to the
4 severance tax permanent fund. All market rate investments and
5 differential rate investments shall be invested in accordance
6 with the Uniform Prudent Investor Act and shall be accounted
7 for in accordance with generally accepted accounting
8 principles."

9 SECTION 3. A new section of the Severance Tax Bonding
10 Act, Section 7-27-5.27 NMSA 1978, is enacted to read:

11 "7-27-5.27. [NEW MATERIAL] ECONOMIC DEVELOPMENT
12 DEPARTMENT INVESTMENTS IN QUALIFIED BUSINESSES.--

13 A. Using amounts of the market value of the
14 severance tax permanent fund transferred by the state
15 investment officer pursuant to Subsection C of Section
16 7-27-5.15 NMSA 1978, the economic development department is
17 authorized to make investments in qualified businesses to
18 create new job opportunities and to support new, emerging or
19 expanding businesses if each investment is made:

20 (1) contemporaneously with and on
21 substantially the same terms as one or more qualified
22 investments in the qualified business; and

23 (2) per qualified business, in an aggregate
24 amount of:

25 (a) no less than five hundred thousand

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1 (\$500,000); and

2 (b) no more than fifty percent of the
3 aggregate amount of contemporaneous qualified investments in
4 the qualified business.

5 B. The economic development department shall:

6 (1) invest no more than one million dollars
7 (\$1,000,000) in any twelve-month period in a single qualified
8 business;

9 (2) not evaluate a proposed investment other
10 than to the extent necessary to determine compliance with this
11 section; and

12 (3) transfer the proceeds from investments
13 made pursuant to this section to the state investment officer
14 for deposit in the severance tax permanent fund.

15 C. By September 1, 2016 and each subsequent year,
16 the economic development department shall appear before the
17 legislative finance committee to provide a detailed report
18 about investments made and proceeds transferred for deposit in
19 the immediately preceding fiscal year pursuant to this section,
20 including:

21 (1) the total:
22 (a) number of investments made;
23 (b) amount of money invested; and
24 (c) amount of earnings made; and

25 (2) for each investment:

1 (a) the name and a detailed description
2 of the qualified business;

3 (b) the amount of the investment;

4 (c) the amount of earnings received from
5 the investment; and

6 (d) an analysis of the: 1) efficacy of
7 the investment in fostering business growth in the state; 2)
8 financial viability of the qualified business; and 3) earnings
9 projections for the qualified business.

10 D. As used in this section:

11 (1) "business" means a corporation, general
12 partnership, limited partnership, limited liability company or
13 other similar entity, but excludes an entity that is a
14 government or a nonprofit organization designated as such by
15 the federal government or any state;

16 (2) "equity" means common or preferred stock
17 of a corporation, a partnership interest in a limited
18 partnership or a membership interest in a limited liability
19 company, including debt subject to an option in favor of the
20 creditor to convert the debt into common or preferred stock, a
21 partnership interest or a membership interest;

22 (3) "high-technology research" means research:

23 (a) that is undertaken for the purpose
24 of discovering information that is technological in nature and
25 the application of which is intended to be useful in the

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1 development of a new or improved business component of the
2 qualified business; and

3 (b) substantially all of the activities
4 of which constitute elements of a process or experimentation
5 related to a new or improved function, performance, reliability
6 or quality, but not related to style, taste or cosmetic or
7 seasonal design factors;

8 (4) "manufacturing" means combining or
9 processing components or materials to increase their value for
10 sale in the ordinary course of business, but does not include:

11 (a) construction;
12 (b) farming;
13 (c) processing natural resources,
14 including hydrocarbons; or

15 (d) preparing meals for immediate
16 consumption, on- or off-premises;

17 (5) "qualified business" means a business
18 that:

19 (a) maintains its principal place of
20 business in New Mexico;

21 (b) engages in high-technology research
22 or manufacturing activities in New Mexico;

23 (c) is not primarily engaged in or is
24 not primarily organized as any of the following types of
25 businesses: credit or finance services, including banks,

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1 savings and loan associations, credit unions, small loan
2 companies or title loan companies; financial brokering or
3 investment; professional services, including accounting, legal
4 services, engineering and any other service the practice of
5 which requires a license; insurance; real estate; construction
6 or construction contracting; consulting or brokering; mining;
7 wholesale or retail trade; providing utility service, including
8 water, sewerage, electricity, natural gas, propane or butane;
9 publishing, including publishing newspapers or other
10 periodicals; broadcasting; or providing internet operating
11 services;

12 (d) has not issued securities registered
13 pursuant to Section 6 of the federal Securities Act of 1933, as
14 amended; has not issued securities traded on a national
15 securities exchange; is not subject to reporting requirements
16 of the federal Securities Exchange Act of 1934, as amended; and
17 is not registered pursuant to the federal Investment Company
18 Act of 1940, as amended, at the time of the investment;

19 (e) has one hundred or fewer employees
20 calculated on a full-time-equivalent basis at the time of the
21 investment; and

22 (f) has not had gross revenues in excess
23 of five million dollars (\$5,000,000) in any fiscal year ending
24 on or before the date of the investment; and

25 (6) "qualified investment" means a cash

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1 investment in a qualified business for equity, but does not
2 include an investment by a taxpayer if the taxpayer, a member
3 of the taxpayer's immediate family or an entity affiliated with
4 the taxpayer receives compensation from the qualified business
5 in exchange for services provided to the qualified business
6 within one year of investment in the qualified business."

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