

1 AN ACT  
2 RELATING TO PUBLIC FINANCE; ENACTING THE SMALL BUSINESS  
3 RECOVERY ACT OF 2020; CREATING THE SMALL BUSINESS RECOVERY  
4 LOAN FUND; PROVIDING SMALL BUSINESS RECOVERY LOANS FOR  
5 CERTAIN BUSINESSES; ESTABLISHING TERMS FOR SMALL BUSINESS  
6 RECOVERY LOANS; REQUIRING REPAYMENT; PROVIDING FOR THE  
7 INVESTMENT OF THE SEVERANCE TAX PERMANENT FUND IN CERTAIN  
8 LOANS; PROVIDING TERMS; REQUIRING A CERTAIN AMOUNT OF THE  
9 SEVERANCE TAX PERMANENT FUND TO BE INVESTED IN LOANS FOR  
10 LOCAL GOVERNMENTS THAT EXPERIENCE A DECLINE IN REVENUE DUE TO  
11 THE CORONAVIRUS DISEASE 2019 PANDEMIC; ALLOWING FOR AN  
12 INCREASE IN THE INVESTMENT OF THE SEVERANCE TAX PERMANENT  
13 FUND IN NEW MEXICO PRIVATE EQUITY FUNDS OR NEW MEXICO  
14 BUSINESSES; ESTABLISHING REPORTING REQUIREMENTS; OMITTING  
15 DATA FROM MARCH 1, 2020 THROUGH JUNE 30, 2021 FROM THE  
16 CALCULATIONS OF EMPLOYER CONTRIBUTIONS TO THE UNEMPLOYMENT  
17 COMPENSATION FUND, EXCESS CLAIMS PREMIUMS AND EXCESS CLAIMS  
18 RATES; USING THE 2019 COMPUTATION DATE RESERVE FACTOR FROM  
19 JANUARY 1, 2020 THROUGH JUNE 30, 2021; REPEALING LAWS 2020,  
20 CHAPTER 75, SECTION 1 TO MAKE CONFORMING TECHNICAL CHANGES;  
21 MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

22  
23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

24 SECTION 1. SHORT TITLE.--Sections 1 through 7 of this  
25 act may be cited as the "Small Business Recovery Act of

1 2020".

2 SECTION 2. DEFINITIONS.--As used in the Small Business  
3 Recovery Act of 2020:

4 A. "authority" means the New Mexico finance  
5 authority;

6 B. "average adjusted monthly business expenses"  
7 means an amount equal to the quotient of:

8 (1) a business's total expenses for taxable  
9 year 2019, excluding expenses deducted pursuant to Section  
10 179 of the United States Internal Revenue Code of 1986, as  
11 that section may be amended or renumbered, and expenses for  
12 depreciation and bonus depreciation deducted pursuant to the  
13 United States Internal Revenue Code of 1986, as determined  
14 from the business's federal income tax return for taxable  
15 year 2019, less the amount of any loan obtained by the  
16 business pursuant to Section 1102 of the federal Coronavirus  
17 Aid, Relief, and Economic Security Act; and

18 (2) twelve;

19 C. "community development financial institution"  
20 means a legal entity operating within the state that is  
21 certified as a community development financial institution by  
22 the federal community development financial institutions  
23 fund;

24 D. "loan servicer" means a federally insured  
25 depository institution or community development financial

1 institution that assembles and submits the small business  
2 recovery loan documents to the authority;

3 E. "New Mexico resident" means an individual who  
4 is domiciled in this state during any part of the year or an  
5 individual who is physically present in this state for one  
6 hundred eighty-five days or more during the taxable year;

7 F. "ordinary and necessary business expenses"  
8 means all expenses, including expenses and capital expenses  
9 incurred to operate the business in compliance with a public  
10 health order;

11 G. "qualifying small business" means a business or  
12 nonprofit corporation that:

13 (1) has closed or reduced operations due to  
14 the public health order issued by the secretary of health on  
15 March 23, 2020;

16 (2) had an annual gross revenue of less than  
17 five million dollars (\$5,000,000) as determined from the  
18 business's federal income tax return for taxable year 2019;

19 (3) during the months of April and May 2020,  
20 experienced one of the following:

21 (a) for a business entity other than a  
22 nonprofit corporation, a decline in the business's monthly  
23 gross receipts by more than thirty percent from the  
24 business's monthly gross receipts for that month in 2019, as  
25 reported monthly by the business to the taxation and revenue

1 department; or

2 (b) for a business entity that is  
3 organized and operated as a nonprofit corporation, a decline  
4 in the business's monthly revenue by more than thirty percent  
5 from the business's monthly revenue for that month in 2019,  
6 as determined through accounting information that is provided  
7 by the business and certified to be accurate and information  
8 reported by the business to the federal internal revenue  
9 service for the previous year; and

10 (4) is organized and operated as a nonprofit  
11 corporation or is owned as follows:

12 (a) for a sole proprietorship, one  
13 hundred percent of the assets of the business are owned or  
14 leased by a New Mexico resident; and

15 (b) for a corporation, partnership,  
16 joint venture, limited liability company, limited partnership  
17 or other business entity, at least eighty percent of the  
18 total voting power of the entity and at least eighty percent  
19 of the total value of the equity is owned by one or more New  
20 Mexico residents; and

21 H. "service provider" means a nonprofit or  
22 governmental organization that provides interactive,  
23 technical assistance to small businesses, including:

24 (1) developing sustainable business  
25 practices;

1 (2) training in marketing, administration  
2 and financial management; and

3 (3) complying with legal requirements,  
4 licensing requirements and tax liabilities; and

5 I. "nonprofit corporation" means an entity  
6 organized pursuant to Section 501 (c)(3) or 501 (c)(6) of the  
7 Internal Revenue Service Code.

8 SECTION 3. SMALL BUSINESS RECOVERY LOAN FUND--CREATED--  
9 FUNDING SCHEDULE.--

10 A. The "small business recovery loan fund" is  
11 created in the authority. The fund consists of  
12 appropriations, gifts, grants, deposits, transfers and  
13 donations to the fund. Money in the fund is appropriated to  
14 the authority to administer the provisions of the Small  
15 Business Recovery Act of 2020. The authority shall  
16 administer the fund. Balances remaining in the fund at the  
17 end of fiscal year 2022 shall revert to the severance tax  
18 permanent fund. The authority may expend no more than one  
19 percent of the balance of the fund for administering the  
20 Small Business Recovery Act of 2020.

21 B. Upon the effective date of this 2020 act, the  
22 authority and the state investment council shall coordinate  
23 to develop a funding schedule to ensure that sufficient  
24 funding, as provided for in Section 10 of this 2020 act, is  
25 made available to the authority to carry out the provisions

1 of the Small Business Recovery Act of 2020.

2 SECTION 4. LOANS--TERMS.--

3 A. The authority shall receive and review  
4 applications for small business recovery loans pursuant to  
5 the Small Business Recovery Act of 2020. The authority shall  
6 review all small business recovery loan applications in the  
7 order in which the completed applications were received and  
8 shall provide a determination to the applicant as soon as  
9 practicable. The authority shall make loans to qualifying  
10 small businesses; provided that funds are available and the  
11 qualifying small business meets the requisite  
12 creditworthiness, as determined by the authority. The  
13 authority shall adopt rules to govern the application  
14 procedures and requirements for disbursing loans under the  
15 Small Business Recovery Act of 2020, including requirements  
16 consistent with the purpose of that act for determining the  
17 eligibility of qualifying small businesses for loans;  
18 provided that the authority shall not create additional  
19 requirements for eligibility other than those provided by  
20 that act.

21 B. The authority shall evaluate the  
22 creditworthiness of an applicant based on information  
23 received from the applicant, which may include an independent  
24 credit reporting agency report when available.

25 C. The authority may use funding made available

1 for the Small Business Recovery Act of 2020 to contract with  
2 a loan servicer to assist in carrying out the provisions of  
3 the Small Business Recovery Act of 2020, including  
4 determining:

5 (1) whether an entity meets the requirements  
6 to be considered a qualifying small business;

7 (2) whether a qualifying small business is  
8 eligible for a small business recovery loan; and

9 (3) the amount that the qualifying small  
10 business is eligible to receive for a small business recovery  
11 loan.

12 D. The authority shall make small business  
13 recovery loans in accordance with the following:

14 (1) the loan amount shall be in an amount  
15 equal to two hundred percent of the qualifying small  
16 business's average adjusted monthly business expenses from  
17 the previous calendar or fiscal year; provided that the  
18 maximum loan amount shall be no greater than seventy-five  
19 thousand dollars (\$75,000);

20 (2) the terms of the loan shall require that  
21 the loan recipient:

22 (a) use a minimum of eighty percent of  
23 the proceeds of the loan for ordinary and necessary business  
24 expenses, including capital expenses, other than compensation  
25 for employees who own equity in the business;

1 (b) provide a written certification  
2 signed by an appropriate officer of the qualifying small  
3 business that certifies that: 1) the officer understands  
4 that the business is receiving a loan under the Small  
5 Business Recovery Act of 2020 that must be repaid by the  
6 business with interest under the terms of the loan agreement;  
7 2) all documents submitted in support of the loan application  
8 are true and accurate to the best of the officer's knowledge;  
9 3) the officer has a reasonable basis to believe that, as of  
10 the date of origination of the loan and receipt of the loan  
11 proceeds, the business does not expect to permanently cease  
12 business operations or file for bankruptcy; 4) prior to the  
13 issuance of the public health order issued by the secretary  
14 of health on March 23, 2020, the business was current on all  
15 obligations pursuant to the Income Tax Act, the Corporate  
16 Income and Franchise Tax Act, the Withholding Tax Act, the  
17 Gross Receipts and Compensating Tax Act and the Unemployment  
18 Compensation Law applicable to the business's operations; and  
19 5) all loan proceeds will be used for purposes as provided in  
20 the Small Business Recovery Act of 2020, including that no  
21 more than twenty percent of the proceeds may be used as  
22 compensation for employees who own equity in the business;  
23 and

24 (c) provide the authority with ongoing  
25 information relevant to the reporting requirements of the



1 authority provided in Section 7 of the Small Business  
2 Recovery Act of 2020;

3 (3) the terms of the loan shall not require  
4 that the qualifying small business provide a personal  
5 guarantee or collateral to secure the loan; and

6 (4) the application for a loan must be  
7 received no later than December 31, 2020.

8 E. The authority may exercise any power provided  
9 to the authority in the New Mexico Finance Authority Act to  
10 assist in the administration of this; provided that the power  
11 is consistent with the provisions of this act.

12 SECTION 5. REPAYMENT.--

13 A. Small business recovery loans shall be made for  
14 an initial loan period of three years. The loans shall bear  
15 an annual interest rate equal to one-half of the *Wall Street*  
16 *Journal* prime rate on the date the loan is made.

17 B. Payment of the interest accrued on a small  
18 business recovery loan shall be due in annual installments,  
19 with the first interest payment due on the first anniversary  
20 of the funding date of the loan, and with each subsequent  
21 interest payment due on each subsequent anniversary of the  
22 funding date of the loan thereafter until the loan is paid in  
23 full. Payment on the outstanding principal of a small  
24 business recovery loan may be made on the third anniversary  
25 of the funding date of the loan, or the outstanding principal

1 and interest on the loan may be converted to a loan, at the  
2 request of the borrower and with the consent of the  
3 authority, to be paid in monthly installments over a period  
4 of three additional years.

5 C. Receipts from the repayment of principal or  
6 interest accrued on the loans made pursuant to the Small  
7 Business Recovery Act of 2020 shall be deposited in the  
8 severance tax permanent fund.

9 D. No provision in a small business recovery loan  
10 or the evidence of indebtedness of the loan shall include a  
11 penalty or premium for prepayment of the balance of the  
12 indebtedness.

13 SECTION 6. SMALL BUSINESS TECHNICAL ASSISTANCE--SERVICE  
14 PROVIDERS.--

15 A. A qualified small business with an annual gross  
16 revenue of five hundred thousand dollars (\$500,000) or less  
17 that applies for and receives a small business recovery loan  
18 and that is receiving technical assistance from a service  
19 provider is eligible to receive additional funding in the  
20 amount of one-half percent of the loan amount to pay the  
21 service provider for continued technical assistance during  
22 the term of the loan or until the service provider certifies  
23 to the authority that the qualified small business no longer  
24 needs the assistance of the service provider; provided that  
25 the:

1 (1) additional amount shall not be included  
2 in the small business recovery loan and shall not require  
3 repayment;

4 (2) additional amount shall be provided to  
5 the service provider; and

6 (3) authority shall use funding made  
7 available for the Small Business Recovery Act of 2020 to  
8 provide the service provider with the additional amount.

9 B. Nothing in this section shall be construed to  
10 require a small business with an annual gross revenue of five  
11 hundred thousand dollars (\$500,000) or less to contract with  
12 or use the services of a service provider to meet the  
13 qualifications of a small business recovery loan.

14 SECTION 7. REPORTS--CONFIDENTIALITY.--

15 A. Prior to October 1, 2021 and each October 1 for  
16 the proceeding four years, the authority shall submit a  
17 report to the legislature, the legislative finance committee,  
18 the New Mexico finance authority oversight committee, the  
19 revenue stabilization and tax policy committee and any other  
20 appropriate legislative interim committee. The report shall  
21 provide details regarding the loans made pursuant to the  
22 Small Business Recovery Act of 2020. The report shall  
23 include:

24 (1) the total number of loans made pursuant  
25 to that act;

- 1 (2) the total number of loan applications;
- 2 (3) the average amount of money provided to
- 3 loan applicants;
- 4 (4) the total number of loans and the amount
- 5 of those loans, if any, in a delinquent status or default;
- 6 (5) the total number of loan recipients that
- 7 are in the process of filing or have filed for bankruptcy;
- 8 (6) the total number of employees currently
- 9 employed by a business that received a loan; and
- 10 (7) an overview of the industries and types
- 11 of business entities represented by loan recipients.

12 B. Information obtained by the authority regarding  
13 individual loan applicants is confidential and not subject to  
14 inspection pursuant to the Inspection of Public Records Act;  
15 provided that nothing in this section shall prevent the  
16 authority from disclosing broad demographic information and  
17 information relating to the total amount of loans made, the  
18 total outstanding balance of loans made pursuant to the Small  
19 Business Recovery Act of 2020 and the names of the loan  
20 recipients.

21 SECTION 8. A new section of the Severance Tax Bonding  
22 Act is enacted to read:

23 "LOCAL GOVERNMENT EMERGENCY ECONOMIC RELIEF.--

24 A. Within thirty days of the effective date of  
25 this 2020 act, the state investment officer shall make a

1 commitment to the authority to invest one percent of the  
2 average of the year-end market values of the severance tax  
3 permanent fund for the immediately preceding five calendar  
4 years for the purpose of making loans to local governments  
5 pursuant to this section; provided that investments made  
6 pursuant to this section are in compliance with the prudent  
7 investor rule set forth in the Uniform Prudent Investor Act.  
8 The authority may expend no more than one percent of the  
9 funding made available to it pursuant to this section for  
10 administering the provisions of this section.

11 B. The authority shall receive and review  
12 applications for loans from the amount committed pursuant to  
13 Subsection A of this section to a local government that can  
14 demonstrate that the local government experienced at least a  
15 ten percent decline in local option gross receipts tax  
16 revenue for the last quarter of fiscal year 2020 due to the  
17 economic impacts of the coronavirus disease 2019 pandemic.  
18 The authority shall adopt rules to govern the application  
19 procedures and requirements for disbursing the loans.

20 C. The authority shall make loans from the amount  
21 committed pursuant to Subsection A of this section in  
22 accordance with the following:

23 (1) an application for a loan shall be  
24 received by the authority no later than December 31, 2020;

25 (2) the authority shall determine the proper

1 amount for a loan in consultation with the local government  
2 division of the department of finance and administration and  
3 the local government; provided that:

4 (a) the authority shall take into  
5 consideration the local government's actual decline of local  
6 gross receipts tax revenue in the determination of a loan  
7 amount; and

8 (b) a loan shall not exceed fifty  
9 percent of the local government's actual decline of local  
10 gross receipts tax revenue; and

11 (3) terms of the loan shall include that:

12 (a) a local government may use loan  
13 proceeds for general operating expenses and revenue  
14 replacement;

15 (b) a local government shall dedicate  
16 future local option gross receipts tax revenue to secure the  
17 loan at a lien level as determined by the authority;

18 (c) a loan shall bear an annual  
19 interest rate equal to two percent;

20 (d) a loan shall be structured as an  
21 interest-only loan for a period of three years, at which time  
22 the local government shall begin making monthly payments on  
23 the principal and interest of any balance of the loan;

24 (e) interest on a loan shall not  
25 compound until twelve months following the date the loan

1 proceeds are made available to the local government; and

2 (f) a loan shall be made for a period  
3 of no more than five years.

4 D. Receipts from the repayment of loans made  
5 pursuant to this section shall be transferred to the  
6 severance tax permanent fund.

7 E. No provision in a loan or the evidence of  
8 indebtedness of a loan shall include a penalty or premium for  
9 prepayment of the balance of the indebtedness.

10 F. On or before October 1 of a year that a loan  
11 made pursuant to this section is outstanding, the authority  
12 shall audit the loan program and submit a report of the  
13 findings to the New Mexico finance authority oversight  
14 committee, the legislative finance committee and the office  
15 of the governor. The report shall provide details regarding  
16 the loans made pursuant to this section, including:

17 (1) the name of each local government that  
18 received a loan, the loan amount, the balance owed and if the  
19 loan is in a delinquent status or default; and

20 (2) the number of jobs saved that can be  
21 attributed to receiving the loan, with evidence of how the  
22 loan saved each job.

23 G. The authority may exercise any power provided  
24 to the authority in the New Mexico Finance Authority Act to  
25 assist in the administration of section; provided that the

1 power is consistent with the provisions of this section.

2 H. As used in this section:

3 (1) "authority" means the New Mexico finance  
4 authority;

5 (2) "local government" means a municipality  
6 or county; and

7 (3) "local option gross receipts tax  
8 revenue" means:

9 (a) for a municipality, revenue  
10 distributed to the municipality pursuant to Section 7-1-6.4  
11 NMSA 1978 and transferred to the municipality pursuant to  
12 Section 7-1-6.12 NMSA 1978; and

13 (b) for a county, revenue transferred  
14 to the county pursuant to Section 7-1-6.13 NMSA 1978."

15 SECTION 9. Section 7-27-5 NMSA 1978 (being Laws 1983,  
16 Chapter 306, Section 7, as amended) is amended to read:

17 "7-27-5. INVESTMENT OF SEVERANCE TAX PERMANENT FUND.--

18 A. The severance tax permanent fund shall be  
19 invested in separate differential rate and market rate  
20 investment classes. "Differential rate investments" are  
21 permitted in Sections 7-27-5.3 through 7-27-5.5, 7-27-5.13  
22 through 7-27-5.17, 7-27-5.22, 7-27-5.24 and 7-27-5.26 NMSA  
23 1978 and are intended to stimulate the economy of New Mexico  
24 and to provide income to the severance tax permanent fund.

25 "Market rate investments" are investments that are not



1 differential rate investments and are intended to provide  
2 income to the severance tax permanent fund. All market rate  
3 investments and differential rate investments shall be  
4 invested in accordance with the Uniform Prudent Investor Act  
5 and shall be accounted for in accordance with generally  
6 accepted accounting principles.

7 B. In addition to the investment classes described  
8 in Subsection A of this section, the severance tax permanent  
9 fund shall be invested in loans to provide emergency economic  
10 relief to local governments as provided by Section 8 of this  
11 2020 act."

12 SECTION 10. Section 7-27-5.15 NMSA 1978 (being Laws  
13 1990, Chapter 126, Section 5, as amended) is amended to read:

14 "7-27-5.15. NEW MEXICO PRIVATE EQUITY FUNDS AND NEW  
15 MEXICO BUSINESS INVESTMENTS.--

16 A. In addition to the investments required by  
17 Subsections F and G of this section, no more than eleven  
18 percent of the market value of the severance tax permanent  
19 fund may be invested in New Mexico private equity funds or  
20 New Mexico businesses under this section.

21 B. In making investments pursuant to Subsection A  
22 of this section, the council shall make investments in New  
23 Mexico private equity funds or New Mexico businesses whose  
24 investments or enterprises enhance the economic development  
25 objectives of the state.

1 C. The state investment officer shall make  
2 investments pursuant to Subsection A of this section only  
3 upon approval of the council and within guidelines and  
4 policies established by the council.

5 D. As used in this section:

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

12 (2) "New Mexico private equity fund" means  
13 an entity that makes, manages or sources potential  
14 investments in New Mexico businesses and that:

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

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

22 (c) has at least one full-time manager  
23 with at least three years of professional experience in  
24 assessing the growth prospects of businesses or evaluating  
25 business plans;

1 (d) is committed to investing or helps  
2 secure investing by others, in an amount at least equal to  
3 the total investment made by the state investment officer in  
4 that fund pursuant to this section, in businesses with a  
5 principal place of business in New Mexico and that hold  
6 promise for attracting additional capital from individual or  
7 institutional investors nationwide for businesses in New  
8 Mexico; and

9 (e) accepts investments only from  
10 accredited investors as that term is defined in Section 2 of  
11 the federal Securities Act of 1933, as amended (15 USCA  
12 Section 77(b)), and rules and regulations promulgated  
13 pursuant to that section, or federally recognized Indian  
14 tribes, nations and pueblos with at least five million  
15 dollars (\$5,000,000) in overall investment assets.

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

21 (1) the investments are made:

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

1 (b) in a New Mexico aerospace business  
2 that has received an award from the United States government  
3 or one of its agencies or instrumentalities: 1) in an  
4 amount, not less than one hundred million dollars  
5 (\$100,000,000), that is equal to at least ten times the  
6 investment from the severance tax permanent fund; and 2) for  
7 the purpose of stimulating commercial enterprises; or

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

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

25 (3) the investments represent no more than

1 fifty-one percent of the total investment capital in a  
2 business; provided, however, that nothing in this subsection  
3 prohibits the ownership of more than fifty-one percent of the  
4 total investment capital in a New Mexico business if the  
5 additional ownership interest:

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

9 (b) is necessary to protect the  
10 investment; and

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

13 F. In addition to the investments required by  
14 Subsections A and G of this section, the state investment  
15 officer shall make a commitment to the small business  
16 investment corporation pursuant to the Small Business  
17 Investment Act to invest two percent of the market value of  
18 the severance tax permanent fund to create new job  
19 opportunities by providing capital for land, buildings or  
20 infrastructure for facilities to support new or expanding  
21 businesses and to otherwise make investments to create new  
22 job opportunities to support new or expanding businesses in a  
23 manner consistent with the constitution of New Mexico. On  
24 July 1 of each year, the state investment officer shall  
25 determine whether the invested capital in the small business

1 investment corporation is less than two percent of the market  
2 value of the severance tax permanent fund. If the invested  
3 capital in the small business investment corporation equals  
4 less than two percent of the market value of the severance  
5 tax permanent fund, further commitments shall be made until  
6 the invested capital is equal to two percent of the market  
7 value of the fund.

8 G. In addition to the investments provided for in  
9 Subsections A and F of this section, the state investment  
10 officer shall make a commitment to the New Mexico finance  
11 authority to invest the lesser of four hundred million  
12 dollars (\$400,000,000) or ten percent of the market value of  
13 the severance tax permanent fund in investments made pursuant  
14 to the Small Business Recovery Act of 2020; provided that:

15 (1) investments made pursuant to and in  
16 compliance with the Small Business Recovery Act of 2020 shall  
17 be deemed to be in compliance with the prudent investor rule  
18 set forth in the Uniform Prudent Investor Act; and

19 (2) the New Mexico finance authority shall  
20 not be held liable for investments made pursuant to this  
21 subsection that do not provide a return on investment that is  
22 comparable to other differential rate investments made  
23 pursuant to the Severance Tax Bonding Act.

24 H. The state investment officer shall report  
25 semiannually on the investments made pursuant to this

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

13 SECTION 11. Section 51-1-11 NMSA 1978 (being Laws 2013,  
14 Chapter 133, Section 3, as amended) is amended to read:

15 "51-1-11. EMPLOYER CONTRIBUTION RATES--BENEFITS  
16 CHARGEABLE--UNEMPLOYMENT COMPENSATION FUND ADEQUATE RESERVE--  
17 RESERVE FACTOR--EXCESS CLAIMS PREMIUM--DEFINITIONS.--

18 A. Benefits paid to an individual shall be charged  
19 to the individual's base-period employers on a pro rata basis  
20 according to the proportion of the individual's total base-  
21 period wages received from each employer, except that no  
22 benefits paid to a claimant as extended benefits under the  
23 provisions of Section 51-1-48 NMSA 1978 shall be charged to  
24 any base-period employer who is not on a reimbursable basis  
25 and who is not a governmental entity and, except as the

1 secretary shall by rule prescribe otherwise, in the case of  
2 benefits paid to an individual who:

3 (1) left the employ of a base-period  
4 employer who is not on a reimbursable basis voluntarily  
5 without good cause in connection with the individual's  
6 employment;

7 (2) was discharged from the employment of a  
8 base-period employer who is not on a reimbursable basis for  
9 misconduct connected with the individual's employment;

10 (3) is employed part time by a base-period  
11 employer who is not on a reimbursable basis and who continues  
12 to furnish the individual the same part-time work while the  
13 individual is separated from full-time work for a  
14 nondisqualifying reason; or

15 (4) received benefits based upon wages  
16 earned from a base-period employer who is not on a  
17 reimbursable basis while attending approved training under  
18 the provisions of Subsection E of Section 51-1-5 NMSA 1978.

19 B. The division shall not charge a contributing or  
20 reimbursing base-period employer with any portion of benefit  
21 amounts that the division can bill to or recover from the  
22 federal government as either regular or extended benefits.

23 C. The division shall not charge a contributing  
24 base-period employer with any portion of benefits paid to an  
25 individual for dependent allowance or because the individual



1 to whom benefits are paid:

2 (1) separated from employment due to  
3 domestic abuse, as "domestic abuse" is defined in Section  
4 40-13-2 NMSA 1978; or

5 (2) voluntarily left work to relocate  
6 because of a spouse, who is in the military service of the  
7 United States or the New Mexico national guard, receiving  
8 permanent change of station orders, activation orders or unit  
9 deployment orders.

10 D. All contributions to the fund shall be pooled  
11 and available to pay benefits to any individual entitled  
12 thereto, irrespective of the source of the contributions.

13 E. In the case of a transfer of an employing  
14 enterprise, notwithstanding any other provision of law, the  
15 experience history of the transferred enterprise shall be  
16 transferred from the predecessor employer to the successor  
17 under the following conditions and in accordance with the  
18 applicable rules of the secretary:

19 (1) except as otherwise provided in this  
20 subsection, for the purpose of this subsection, two or more  
21 employers who are parties to or the subject of any  
22 transaction involving the transfer of an employing enterprise  
23 shall be deemed to be a single employer and the experience  
24 history of the employing enterprise shall be transferred to  
25 the successor employer if the successor employer has acquired

1 by the transaction all of the business enterprises of the  
2 predecessor; provided that:

3 (a) all contributions, interest and  
4 penalties due from the predecessor employer have been paid;

5 (b) notice of the transfer has been  
6 given in accordance with the rules of the secretary during  
7 the calendar year of the transaction transferring the  
8 employing enterprise or the date of the actual transfer of  
9 control and operation of the employing enterprise;

10 (c) the successor shall notify the  
11 division of the acquisition on or before the due date of the  
12 successor's first wage and contribution report. If the  
13 successor employer fails to notify the division of the  
14 acquisition within this time limit, the division, when it  
15 receives actual notice, shall effect the transfer of the  
16 experience history and applicable rate of contribution  
17 retroactively to the date of the acquisition, and the  
18 successor shall pay a penalty of fifty dollars (\$50.00); and

19 (d) where the transaction involves only  
20 a merger, consolidation or other form of reorganization  
21 without a substantial change in the ownership and controlling  
22 interest of the business entity, as determined by the  
23 secretary, the limitations on transfers stated in  
24 Subparagraphs (a), (b) and (c) of this paragraph shall not  
25 apply. A party to a merger, consolidation or other form of

1 reorganization described in this subparagraph shall not be  
2 relieved of liability for any contributions, interest or  
3 penalties due and owing from the employing enterprise at the  
4 time of the merger, consolidation or other form of  
5 reorganization;

6 (2) the applicable experience history may be  
7 transferred to the successor in the case of a partial  
8 transfer of an employing enterprise if the successor has  
9 acquired one or more of the several employing enterprises of  
10 a predecessor but not all of the employing enterprises of the  
11 predecessor and each employing enterprise so acquired was  
12 operated by the predecessor as a separate store, factory,  
13 shop or other separate employing enterprise and the  
14 predecessor, throughout the entire period of the contribution  
15 with liability applicable to each enterprise transferred, has  
16 maintained and preserved payroll records that, together with  
17 records of contribution liability and benefit chargeability,  
18 can be separated by the parties from the enterprises retained  
19 by the predecessor to the satisfaction of the secretary or  
20 the secretary's delegate. A partial experience history  
21 transfer will be made only if the successor:

22 (a) notifies the division of the  
23 acquisition, in writing, not later than the due date of the  
24 successor's first quarterly wage and contribution report  
25 after the effective date of the acquisition;

1 (b) files an application provided by  
2 the division that contains the endorsement of the predecessor  
3 within thirty days from the delivery or mailing of such  
4 application by the division to the successor's last known  
5 address; and

6 (c) files with the application a form  
7 with a schedule of the name and social security number of and  
8 the wages paid to and the contributions paid for each  
9 employee for the three and one-half-year period preceding the  
10 computation date through the date of transfer or such lesser  
11 period as the enterprises transferred may have been in  
12 operation. The application and form shall be supported by  
13 the predecessor's permanent employment records, which shall  
14 be available for audit by the division. The application and  
15 form shall be reviewed by the division and, upon approval,  
16 the percentage of the predecessor's experience history  
17 attributable to the enterprises transferred shall be  
18 transferred to the successor. The percentage shall be  
19 obtained by dividing the taxable payrolls of the transferred  
20 enterprises for such three and one-half-year period preceding  
21 the date of computation or such lesser period as the  
22 enterprises transferred may have been in operation by the  
23 predecessor's entire payroll;

24 (3) if, at the time of a transfer of an  
25 employing enterprise in whole or in part, both the

1 predecessor and the successor are under common ownership,  
2 then the experience history attributable to the transferred  
3 business shall also be transferred to and combined with the  
4 experience history attributable to the successor employer.  
5 The rates of both employers shall be recalculated and made  
6 effective immediately upon the date of the transfer;

7 (4) whenever a person, who is not currently  
8 an employer, acquires the trade or business of an employing  
9 enterprise, the experience history of the acquired business  
10 shall not be transferred to the successor if the secretary or  
11 the secretary's designee finds that the successor acquired  
12 the business solely or primarily for the purpose of obtaining  
13 a lower rate of contributions. Instead, the successor shall  
14 be assigned the applicable new employer rate pursuant to this  
15 section. In determining whether the business was acquired  
16 solely or primarily for the purpose of obtaining a lower rate  
17 of contribution, the secretary or the secretary's designee  
18 shall consider:

- 19 (a) the cost of acquiring the business;  
20 (b) whether the person continued the  
21 business enterprise of the acquired business;  
22 (c) how long such business enterprise  
23 was continued; and  
24 (d) whether a substantial number of new  
25 employees was hired for performance of duties unrelated to

1 those that the business activity conducted prior to  
2 acquisition;

3 (5) if, following a transfer of experience  
4 history pursuant to this subsection, the department  
5 determines that a substantial purpose of the transfer of the  
6 employing enterprise was to obtain a reduced liability for  
7 contributions, then the experience rating accounts of the  
8 employers involved shall be combined into a single account  
9 and a single rate assigned to the combined account;

10 (6) the secretary shall adopt such rules as  
11 are necessary to interpret and carry out the provisions of  
12 this subsection, including rules that:

13 (a) describe how experience history is  
14 to be transferred; and

15 (b) establish procedures to identify  
16 the type of transfer or acquisition of an employing  
17 enterprise; and

18 (7) a person who knowingly violates or  
19 attempts to violate a rule adopted pursuant to Paragraph (6)  
20 of this subsection, who transfers or acquires, or attempts to  
21 transfer or acquire, an employing enterprise for the sole or  
22 primary purpose of obtaining a reduced liability for  
23 contributions or who knowingly advises another person to  
24 violate a rule adopted pursuant to Paragraph (6) of this  
25 subsection or to transfer or acquire an employing enterprise

1 for the sole or primary purpose of obtaining a reduced  
2 liability for contributions is guilty of a misdemeanor and  
3 shall be punished by a fine of not less than one thousand  
4 five hundred dollars (\$1,500) or more than three thousand  
5 dollars (\$3,000) or, if an individual, by imprisonment for a  
6 definite term not to exceed ninety days or both. In  
7 addition, such a person shall be subject to the following  
8 civil penalty imposed by the secretary:

9 (a) if the person is an employer, the  
10 person shall be assigned the highest contribution rate  
11 established by the provisions of this section for the  
12 calendar year in which the violation occurs and the three  
13 subsequent calendar years; provided that, if the difference  
14 between the increased penalty rate and the rate otherwise  
15 applicable would be less than two percent of the employer's  
16 payroll, the contribution rate shall be increased by two  
17 percent of the employer's payroll for the calendar year in  
18 which the violation occurs and the three subsequent calendar  
19 years; or

20 (b) if the person is not an employer,  
21 the secretary may impose a civil penalty not to exceed three  
22 thousand dollars (\$3,000).

23 F. Except as provided in Subsection Q of this  
24 section, for each calendar year, if, as of the computation  
25 date for that year, an employer has been a contributing

1 employer throughout the preceding twenty-four months, the  
2 contribution rate for that employer shall be determined by  
3 multiplying the employer's benefit ratio by the reserve  
4 factor as determined pursuant to Subsection H of this section  
5 and, for each calendar year beginning in calendar year 2017,  
6 then multiplying that product by the employer's experience  
7 history factor as determined under Subsection I of this  
8 section; provided that an employer's contribution rate shall  
9 not be less than thirty-three hundredths percent or more than  
10 five and four-tenths percent. An employer's benefit ratio is  
11 determined by dividing the employer's benefit charges during  
12 the immediately preceding fiscal years, up to a maximum of  
13 three fiscal years, by the total of the annual payrolls of  
14 the same time period, calculated to four decimal places,  
15 disregarding any remaining fraction.

16 G. Except as provided in Subsection Q of this  
17 section, for each calendar year, if, as of the computation  
18 date of that year, an employer has been a contributing  
19 employer for less than twenty-four months, the contribution  
20 rate for that employer shall be the average of the  
21 contribution rates for all contributing employers in the  
22 employer's industry, as determined by administrative rule,  
23 but shall not be less than one percent or more than five and  
24 four-tenths percent; provided that an individual, type of  
25 organization or employing unit that acquires all or part of



1 the trade or business of another employing unit, pursuant to  
2 Paragraphs (2) and (3) of Subsection E of Section 51-1-42  
3 NMSA 1978, that has a rate of contribution less than average  
4 of the contribution rates for all contributing employers in  
5 the employer's industry, shall be entitled to the transfer of  
6 the contribution rate of the other employing unit to the  
7 extent permitted under Subsection E of this section.

8 H. The division shall ensure that the fund  
9 sustains an adequate reserve. An adequate reserve shall be  
10 determined to mean that the funds in the fund available for  
11 benefits equal the total amount of funds needed to pay  
12 between eighteen and twenty-four months of benefits at the  
13 average of the five highest years of benefits paid in the  
14 last twenty-five years. Except as provided in Subsection Q  
15 of this section, for the purpose of sustaining an adequate  
16 reserve, the division shall determine a reserve factor to be  
17 used when calculating an employer's contribution rate  
18 pursuant to Subsection F of this section by rule promulgated  
19 by the secretary. Except as provided in Subsection Q of this  
20 section, the rules shall set forth a formula that will set  
21 the reserve factor in proportion to the difference between  
22 the amount of funds available for benefits in the fund, as of  
23 the computation date, and the adequate reserve, within the  
24 following guidelines:

- 25 (1) 1.0000 if, as of the computation date,

1 there is an adequate reserve;

2 (2) between 0.5000 and 0.9999 if, as of the  
3 computation date, there is greater than an adequate reserve;  
4 and

5 (3) between 1.0001 and 4.0000 if, as of the  
6 computation date, there is less than an adequate reserve.

7 I. Except as provided in Subsection Q of this  
8 section, for each calendar year beginning in calendar year  
9 2017, if, as of the computation date for that calendar year,  
10 an employer has been a contributing employer throughout the  
11 preceding twenty-four months, the employer's experience  
12 history factor shall be determined as of the computation date  
13 and shall be based on the employer's reserve. The employer's  
14 reserve shall be calculated as the difference between all of  
15 the employer's previous years' contribution payments and all  
16 of the employer's previous years' benefit charges, divided by  
17 the average of the employer's annual payrolls for the  
18 immediately preceding fiscal years, up to a maximum of three  
19 fiscal years.

|    |                              |                           |
|----|------------------------------|---------------------------|
| 20 | If an employer's reserve is: | The employer's experience |
| 21 |                              | history factor is:        |
| 22 | 6.0% and over                | 0.4000                    |
| 23 | 5.0%-5.9%                    | 0.5000                    |
| 24 | 4.0%-4.9%                    | 0.6000                    |
| 25 | 3.0%-3.9%                    | 0.7000                    |

|   |            |         |
|---|------------|---------|
| 1 | 2.0%-2.9%  | 0.8000  |
| 2 | 1.0%-1.9%  | 0.9000  |
| 3 | 0.0%-0.9%  | 0.9500  |
| 4 | Under 0.0% | 1.0000. |

5           J. Except as provided in Subsection Q of this  
6 section, if an employer's contribution rate pursuant to  
7 Subsection F of this section is calculated to be greater than  
8 five and four-tenths percent, notwithstanding the limitation  
9 pursuant to Subsection F of this section, the employer shall  
10 be charged an excess claims premium in addition to the  
11 contribution rate applicable to the employer; provided that  
12 an employer's excess claims premium shall not exceed one  
13 percent of the employer's annual payroll. The excess claims  
14 premium shall be determined by multiplying the employer's  
15 excess claims rate by the employer's annual payroll. An  
16 employer's excess claims rate shall be determined by  
17 multiplying the difference of the employer's contribution  
18 rate, notwithstanding the limitation pursuant to Subsection F  
19 of this section, less five and four-tenths percent by ten  
20 percent.

21           K. Effective calendar year 2017, any other  
22 provision of law notwithstanding, an employer's contribution  
23 rate plus the employer's excess claims rate, if any, shall  
24 increase by no more than two percentage points from one  
25 calendar year to the next.

1           L. Except as provided in Subsection Q of this  
2 section, the division shall promptly notify each employer of  
3 the employer's rate of contributions and excess claims  
4 premium as determined for any calendar year pursuant to this  
5 section. Such notification shall include the amount  
6 determined as the employer's annual payroll, the total of all  
7 of the employer's contributions paid on the employer's behalf  
8 for all past years and total benefits charged to the employer  
9 for all such years. Such determination shall become  
10 conclusive and binding upon the employer unless, within  
11 thirty days after the mailing of notice thereof to the  
12 employer's last known address or in the absence of mailing,  
13 within thirty days after the delivery of such notice, the  
14 employer files an application for review and redetermination,  
15 setting forth the employer's reason therefor. The employer  
16 shall be granted an opportunity for a fair hearing in  
17 accordance with rules prescribed by the secretary, but an  
18 employer shall not have standing, in any proceeding involving  
19 the employer's rate of contributions or contribution  
20 liability, to contest the chargeability to the employer of  
21 any benefits paid in accordance with a determination,  
22 redetermination or decision pursuant to Section 51-1-8 NMSA  
23 1978, except upon the ground that the services on the basis  
24 of which such benefits were found to be chargeable did not  
25 constitute services performed in employment for the employer

1 and only in the event that the employer was not a party to  
2 such determination, redetermination or decision, or to any  
3 other proceedings under the Unemployment Compensation Law in  
4 which the character of such services was determined. The  
5 employer shall be promptly notified of the decision on the  
6 employer's application for redetermination, which shall  
7 become final unless, within fifteen days after the mailing of  
8 notice thereof to the employer's last known address or in the  
9 absence of mailing, within fifteen days after the delivery of  
10 such notice, further appeal is initiated pursuant to  
11 Subsection D of Section 51-1-8 NMSA 1978.

12 M. The division shall provide each contributing  
13 employer, within ninety days of the end of each calendar  
14 quarter, a written determination of benefits chargeable to  
15 the employer. Such determination shall become conclusive and  
16 binding upon the employer for all purposes unless, within  
17 thirty days after the mailing of the determination to the  
18 employer's last known address or in the absence of mailing,  
19 within thirty days after the delivery of such determination,  
20 the employer files an application for review and  
21 redetermination, setting forth the employer's reason  
22 therefor. The employer shall be granted an opportunity for a  
23 fair hearing in accordance with rules prescribed by the  
24 secretary, but an employer shall not have standing in any  
25 proceeding involving the employer's contribution liability to

1 contest the chargeability to the employer of any benefits  
2 paid in accordance with a determination, redetermination or  
3 decision pursuant to Section 51-1-8 NMSA 1978, except upon  
4 the ground that the services on the basis of which such  
5 benefits were found to be chargeable did not constitute  
6 services performed in employment for the employer and only in  
7 the event that the employer was not a party to such  
8 determination, redetermination or decision, or to any other  
9 proceedings under the Unemployment Compensation Law in which  
10 the character of such services was determined. The employer  
11 shall be promptly notified of the decision on the employer's  
12 application for redetermination, which shall become final  
13 unless, within fifteen days after the mailing of notice  
14 thereof to the employer's last known address or in the  
15 absence of mailing, within fifteen days after the delivery of  
16 such notice, further appeal is initiated pursuant to  
17 Subsection D of Section 51-1-8 NMSA 1978.

18 N. The contributions and excess claims premiums,  
19 together with interest and penalties thereon imposed by the  
20 Unemployment Compensation Law, shall not be assessed nor  
21 shall action to collect the same be commenced more than four  
22 years after a report showing the amount of the contributions  
23 was due. In the case of a false or fraudulent contribution  
24 report with intent to evade contributions or a willful  
25 failure to file a report of all contributions due, the

1 contributions and excess claims premiums, together with  
2 interest and penalties thereon, may be assessed or an action  
3 to collect such contributions may be begun at any time.  
4 Before the expiration of such period of limitation, the  
5 employer and the secretary may agree in writing to an  
6 extension thereof and the period so agreed on may be extended  
7 by subsequent agreements in writing. In any case where the  
8 assessment has been made and action to collect has been  
9 commenced within four years of the due date of any  
10 contribution, excess claims premium, interest or penalty,  
11 including the filing of a warrant of lien by the secretary  
12 pursuant to Section 51-1-36 NMSA 1978, such action shall not  
13 be subject to any period of limitation.

14 O. The secretary shall correct any error in the  
15 determination of an employer's rate of contribution during  
16 the calendar year to which the erroneous rate applies,  
17 notwithstanding that notification of the employer's rate of  
18 contribution may have been issued and contributions paid  
19 pursuant to the notification. Upon issuance by the division  
20 of a corrected rate of contribution, the employer shall have  
21 the same rights to review and redetermination as provided in  
22 Subsection L of this section.

23 P. Any interest required to be paid on advances to  
24 this state's unemployment compensation fund under Title 12 of  
25 the Social Security Act shall be paid in a timely manner as

1 required under Section 1202 of Title 12 of the Social  
2 Security Act and shall not be paid, directly or indirectly,  
3 by the state from amounts in the state's unemployment  
4 compensation fund.

5 Q. The secretary shall omit data for March 1, 2020  
6 through June 30, 2021 from calculations of an employing  
7 enterprise's experience history, excess claims premiums and  
8 excess claims rates. The secretary shall use the 2019  
9 computation date reserve factor from January 1, 2020 through  
10 June 30, 2021.

11 R. As used in this section:

12 (1) "annual payroll" means the total taxable  
13 amount of remuneration from an employer for employment during  
14 a twelve-month period ending on a computation date;

15 (2) "base-period employers" means the  
16 employers of an individual during the individual's base  
17 period;

18 (3) "base-period wages" means the wages of  
19 an individual for insured work during the individual's base  
20 period on the basis of which the individual's benefit rights  
21 were determined;

22 (4) "common ownership" means that two or  
23 more businesses are substantially owned, managed or  
24 controlled by the same person or persons;

25 (5) "computation date" for each calendar



1 year means the close of business on June 30 of the preceding  
2 calendar year;

3 (6) "employing enterprise" means a business  
4 activity engaged in by a contributing employing unit in which  
5 one or more persons have been employed within the current or  
6 the three preceding calendar quarters. An "employing  
7 enterprise" includes the employer's workforce;

8 (7) "experience history" means the benefit  
9 charges and payroll experience of the employing enterprise;

10 (8) "knowingly" means having actual  
11 knowledge of or acting with deliberate ignorance of or  
12 reckless disregard for the prohibition involved;

13 (9) "predecessor" means the owner and  
14 operator of an employing enterprise immediately prior to the  
15 transfer of such enterprise;

16 (10) "successor" means any person that  
17 acquires an employing enterprise and continues to operate  
18 such business entity; and

19 (11) "violates or attempts to violate"  
20 includes an intent to evade, a misrepresentation or a willful  
21 nondisclosure."

22 SECTION 12. REPEAL.--Laws 2020, Chapter 75, Section 1  
23 is repealed.

24 SECTION 13. EMERGENCY.--It is necessary for the public  
25 peace, health and safety that this act take effect

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