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HOUSE BILL 4

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 2020

INTRODUCED BY

Marian Matthews and Daymon Ely

AN ACT

RELATING TO PUBLIC FINANCE; ENACTING THE SMALL BUSINESS
RECOVERY ACT OF 2020; CREATING THE SMALL BUSINESS RECOVERY LOAN
FUND; PROVIDING SMALL BUSINESS RECOVERY LOANS FOR CERTAIN
BUSINESSES; ESTABLISHING TERMS FOR SMALL BUSINESS RECOVERY
LOANS; REQUIRING REPAYMENT; PROVIDING FOR THE INVESTMENT OF THE
SEVERANCE TAX PERMANENT FUND IN CERTAIN LOANS; PROVIDING TERMS;
REQUIRING A CERTAIN AMOUNT OF THE SEVERANCE TAX PERMANENT FUND
TO BE INVESTED IN LOANS FOR LOCAL GOVERNMENTS THAT EXPERIENCE A
DECLINE IN REVENUE DUE TO THE CORONAVIRUS DISEASE 2019
PANDEMIC; ALLOWING FOR AN INCREASE IN THE INVESTMENT OF THE
SEVERANCE TAX PERMANENT FUND IN NEW MEXICO PRIVATE EQUITY FUNDS
OR NEW MEXICO BUSINESSES; ESTABLISHING REPORTING REQUIREMENTS;
REPEALING LAWS 2020, CHAPTER 75, SECTION 1 TO MAKE CONFORMING
TECHNICAL CHANGES; MAKING AN APPROPRIATION; DECLARING AN
EMERGENCY.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 7 of this act may be cited as the "Small Business Recovery Act of 2020".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Small Business Recovery Act of 2020:

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

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

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

(2) twelve;

C. "community development financial institution" means a legal entity operating within the state that is certified as a community development financial institution by

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1 the federal community development financial institutions fund;

2 D. "loan servicer" means a federally insured
3 depository institution or community development financial
4 institution that assembles and submits the small business
5 recovery loan documents to the authority;

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

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

14 G. "qualifying small business" means a business or
15 nonprofit corporation that:

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

19 (2) had an annual gross revenue of less than
20 one million five hundred thousand dollars (\$1,500,000) as
21 determined from the business's federal income tax return for
22 taxable year 2019;

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

25 (a) for a business entity other than a

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1 nonprofit corporation, a decline in the business's monthly
2 gross receipts by more than thirty percent from the business's
3 monthly gross receipts for that month in 2019, as reported
4 monthly by the business to the taxation and revenue department;
5 or

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

14 (4) is classified as retail trade,
15 accommodation and food services, construction, administrative
16 and support services, health care and social assistance or
17 child daycare services by the most recent edition of the United
18 States census bureau's North American industry classification
19 system, is a small independent movie theater or is a tribal
20 entity; and

21 (5) is organized and operated as a nonprofit
22 corporation or is owned as follows:

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

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1 (b) for a corporation, partnership,
2 joint venture, limited liability company, limited partnership
3 or other business entity, at least eighty percent of the total
4 voting power of the entity and at least eighty percent of the
5 total value of the equity is owned by one or more New Mexico
6 residents; and

7 H. "service provider" means a nonprofit or
8 governmental organization that provides interactive, technical
9 assistance to small businesses, including:

- 10 (1) developing sustainable business practices;
11 (2) training in marketing, administration and
12 financial management; and
13 (3) complying with legal requirements,
14 licensing requirements and tax liabilities.

15 SECTION 3. [NEW MATERIAL] SMALL BUSINESS RECOVERY LOAN
16 FUND--CREATED.--The "small business recovery loan fund" is
17 created in the authority. The fund consists of appropriations,
18 gifts, grants, deposits, transfers and donations to the fund.
19 Money in the fund is appropriated to the authority to
20 administer the provisions of the Small Business Recovery Act of
21 2020. The authority shall administer the fund. Balances
22 remaining in the fund at the end of fiscal year 2022 shall
23 revert to the severance tax permanent fund. The authority may
24 expend no more than one percent of the balance of the fund for
25 administering the Small Business Recovery Act of 2020.

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1 SECTION 4. [NEW MATERIAL] LOANS--TERMS.--

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

17 B. The authority may use funding made available for
18 the Small Business Recovery Act of 2020 to contract with a loan
19 servicer to assist in carrying out the provisions of the Small
20 Business Recovery Act of 2020, including determining:

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

23 (2) whether a qualifying small business is
24 eligible for a small business recovery loan; and

25 (3) the amount that the qualifying small

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1 business is eligible to receive for a small business recovery
2 loan.

3 C. The authority shall make small business recovery
4 loans in accordance with the following:

5 (1) the loan amount shall be in an amount
6 equal to two hundred percent of the qualifying small business's
7 average adjusted monthly business expenses from the previous
8 calendar or fiscal year; provided that the maximum loan amount
9 shall be no greater than seventy-five thousand dollars
10 (\$75,000);

11 (2) the terms of the loan shall require that
12 the loan recipient:

13 (a) use a minimum of eighty percent of
14 the proceeds of the loan for ordinary and necessary business
15 expenses, including capital expenses, other than compensation
16 for employees who own equity in the business;

17 (b) provide a written certification
18 signed by an appropriate officer of the qualifying small
19 business that certifies that: 1) the officer understands that
20 the business is receiving a loan under the Small Business
21 Recovery Act of 2020 that must be repaid by the business with
22 interest under the terms of the loan agreement; 2) all
23 documents submitted in support of the loan application are true
24 and accurate to the best of the officer's knowledge; 3) the
25 officer has a reasonable basis to believe that, as of the date

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1 of origination of the loan and receipt of the loan proceeds,
2 the business does not expect to permanently cease business
3 operations or file for bankruptcy; 4) prior to the issuance of
4 the public health order issued by the secretary of health on
5 March 23, 2020, the business was current on all obligations
6 pursuant to the Income Tax Act, the Corporate Income and
7 Franchise Tax Act, the Withholding Tax Act, the Gross Receipts
8 and Compensating Tax Act and the Unemployment Compensation Law
9 applicable to the business's operations; and 5) all loan
10 proceeds will be used for purposes as provided in the Small
11 Business Recovery Act of 2020, including that no more than
12 twenty percent of the proceeds may be used as compensation for
13 employees who own equity in the business; and

14 (c) provide the authority with ongoing
15 information relevant to the reporting requirements of the
16 authority provided in Section 7 of the Small Business Recovery
17 Act of 2020;

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

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

23 SECTION 5. [NEW MATERIAL] REPAYMENT.--

24 A. Small business recovery loans shall be made for
25 an initial loan period of three years. The loans shall bear an

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1 annual interest rate equal to one-half of the *Wall Street*
2 *Journal* prime rate on the date the loan is made.

3 B. Payment of the interest accrued on a small
4 business recovery loan shall be due in annual installments,
5 with the first interest payment due on the first anniversary of
6 the funding date of the loan, and with each subsequent interest
7 payment due on each subsequent anniversary of the funding date
8 of the loan thereafter until the loan is paid in full. Payment
9 on the outstanding principal of a small business recovery loan
10 may be made on the third anniversary of the funding date of the
11 loan, or the outstanding principal and interest on the loan may
12 be converted to a loan, at the request of the borrower and with
13 the consent of the authority, to be paid in monthly
14 installments over a period of three additional years.

15 C. Receipts from the repayment of loans made
16 pursuant to the Small Business Recovery Act of 2020 shall be
17 deposited in the severance tax permanent fund.

18 D. No provision in a small business recovery loan
19 or the evidence of indebtedness of the loan shall include a
20 penalty or premium for prepayment of the balance of the
21 indebtedness.

22 SECTION 6. SMALL BUSINESS TECHNICAL ASSISTANCE--SERVICE
23 PROVIDERS.--

24 A. A qualified small business with an annual gross
25 revenue of five hundred thousand dollars (\$500,000) or less

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1 that applies for and receives a small business recovery loan
2 and that is receiving technical assistance from a service
3 provider is eligible to receive additional funding in the
4 amount of one-half percent of the loan amount to pay the
5 service provider for continued technical assistance during the
6 term of the loan or until the service provider certifies to the
7 authority that the qualified small business no longer needs the
8 assistance of the service provider; provided that the:

9 (1) additional amount shall not be included in
10 the small business recovery loan and shall not require
11 repayment;

12 (2) additional amount shall be provided to the
13 service provider; and

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

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

22 SECTION 7. [NEW MATERIAL] REPORTS--CONFIDENTIALITY.--

23 A. Prior to October 1, 2021 and each October 1 for
24 the proceeding four years, the authority shall submit a report
25 to the legislature, the legislative finance committee, the New

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1 Mexico finance authority oversight committee, the revenue
2 stabilization and tax policy committee and any other
3 appropriate legislative interim committee. The report shall
4 provide details regarding the loans made pursuant to the Small
5 Business Recovery Act of 2020. The report shall include:

6 (1) the total number of loans made pursuant to
7 that act;

8 (2) the total number of loan applications;

9 (3) the average amount of money provided to
10 loan applicants;

11 (4) the total number of loans and the amount
12 of those loans, if any, in a delinquent status or default;

13 (5) the total number of loan recipients that
14 are in the process of filing or have filed for bankruptcy;

15 (6) the total number of employees currently
16 employed by a business that received a loan; and

17 (7) an overview of the industries and types of
18 business entities represented by loan recipients.

19 B. Information obtained by the authority regarding
20 individual loan applicants is confidential and not subject to
21 inspection pursuant to the Inspection of Public Records Act;
22 provided that nothing in this section shall prevent the
23 authority from disclosing broad demographic information and
24 information relating to the total amount of loans made and the
25 total outstanding balance of loans made pursuant to the Small

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1 Business Recovery Act of 2020.

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

4 "[NEW MATERIAL] LOCAL GOVERNMENT EMERGENCY ECONOMIC
5 RELIEF.--

6 A. Within thirty days of the effective date of this
7 2020 act, the state investment officer shall make a commitment
8 to the authority to invest one percent of the average of the
9 year-end market values of the severance tax permanent fund for
10 the immediately preceding five calendar years for the purpose
11 of making loans to local governments pursuant to this section;
12 provided that investments made pursuant to this section are in
13 compliance with the prudent investor rule set forth in the
14 Uniform Prudent Investor Act.

15 B. The authority shall receive and review
16 applications for loans from the amount committed pursuant to
17 Subsection A of this section to a local government that can
18 demonstrate that the local government experienced at least a
19 ten percent decline in fiscal year 2020 operating revenue due
20 to the economic impacts of the coronavirus disease 2019
21 pandemic. The authority shall adopt rules to govern the
22 application procedures and requirements for disbursing the
23 loans.

24 C. The authority shall make loans from the amount
25 committed pursuant to Subsection A of this section in

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1 accordance with the following:

2 (1) an application for a loan shall be
3 received by the authority no later than September 30, 2020;

4 (2) a loan amount shall be in an amount equal
5 to fifty percent of the local government's projected budget
6 shortfall for fiscal year 2020, as determined by the local
7 government division of the department of finance and
8 administration, unless the local government requests a lesser
9 amount; and

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

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

14 (b) a local government shall dedicate
15 future local option gross receipts tax revenue to secure the
16 loan;

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

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

23 (e) interest on a loan shall not
24 compound until twelve months following the date the loan
25 proceeds are made available to the local government; and

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

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

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

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

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

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

22 G. As used in this section:

23 (1) "authority" means the New Mexico finance
24 authority;

25 (2) "local government" means a municipality or

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1 county; and

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

4 (a) for a municipality, revenue
5 distributed to the municipality pursuant to Section 7-1-6.4
6 NMSA 1978 and transferred to the municipality pursuant to
7 Section 7-1-6.12 NMSA 1978; and

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

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

12 "7-27-5. INVESTMENT OF SEVERANCE TAX PERMANENT FUND.--

13 A. The severance tax permanent fund shall be
14 invested in separate differential rate and market rate
15 investment classes. "Differential rate investments" are
16 permitted in Sections 7-27-5.3 through 7-27-5.5, 7-27-5.13
17 through 7-27-5.17, 7-27-5.22, [~~and~~] 7-27-5.24 [~~through~~] and
18 7-27-5.26 NMSA 1978 and are intended to stimulate the economy
19 of New Mexico and to provide income to the severance tax
20 permanent fund. "Market rate investments" are investments that
21 are not differential rate investments and are intended to
22 provide income to the severance tax permanent fund. All market
23 rate investments and differential rate investments shall be
24 invested in accordance with the Uniform Prudent Investor Act
25 and shall be accounted for in accordance with generally

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1 accepted accounting principles.

2 B. In addition to the investment classes described
3 in Subsection A of this section, the severance tax permanent
4 fund shall be invested in loans to provide emergency economic
5 relief to local governments as provided by Section 8 of this
6 2020 act."

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

9 "7-27-5.15. NEW MEXICO PRIVATE EQUITY FUNDS AND NEW
10 MEXICO BUSINESS INVESTMENTS.--

11 A. In addition to the investments required by
12 Subsections F and G of this section, no more than ~~nine~~ eleven
13 percent of the market value of the severance tax permanent fund
14 may be invested in New Mexico private equity funds or New
15 Mexico businesses under this section.

16 B. In making investments pursuant to Subsection A
17 of this section, the council shall make investments in New
18 Mexico private equity funds or New Mexico businesses whose
19 investments or enterprises enhance the economic development
20 objectives of the state.

21 C. The state investment officer shall make
22 investments pursuant to Subsection A of this section only upon
23 approval of the council and within guidelines and policies
24 established by the council.

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 an
8 entity that makes, manages or sources potential investments in
9 New Mexico businesses and that:

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

15 (b) holds out the prospects for capital
16 appreciation from such investments;

17 (c) has at least one full-time manager
18 with at least three years of professional experience in
19 assessing the growth prospects of businesses or evaluating
20 business plans;

21 (d) is committed to investing or helps
22 secure investing by others, in an amount at least equal to the
23 total investment made by the state investment officer in that
24 fund pursuant to this section, in businesses with a principal
25 place of business in New Mexico and that hold promise for

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1 attracting additional capital from individual or institutional
2 investors nationwide for businesses in New Mexico; and

3 (e) accepts investments only from
4 accredited investors as that term is defined in Section 2 of
5 the federal Securities Act of 1933, as amended (15 USCA Section
6 77(b)), and rules and regulations promulgated pursuant to that
7 section, or federally recognized Indian tribes, nations and
8 pueblos with at least five million dollars (\$5,000,000) in
9 overall investment assets.

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

15 (1) the investments are made:

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

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

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1 commercial enterprises; or

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

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

19 (3) the investments represent no more than
20 fifty-one percent of the total investment capital in a
21 business; provided, however, that nothing in this subsection
22 prohibits the ownership of more than fifty-one percent of the
23 total investment capital in a New Mexico business if the
24 additional ownership interest:

25 (a) is due to foreclosure or other

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1 action by the state investment officer pursuant to agreements
2 with the business or other investors in that business;

3 (b) is necessary to protect the
4 investment; and

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

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

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1 G. In addition to the investments provided for in
2 Subsections A and F of this section, the state investment
3 officer shall make a commitment to the New Mexico finance
4 authority to invest the lesser of four hundred million dollars
5 (\$400,000,000) or ten percent of the market value of the
6 severance tax permanent fund in investments made pursuant to
7 the Small Business Recovery Act of 2020; provided that:

8 (1) investments made pursuant to and in
9 compliance with the Small Business Recovery Act of 2020 shall
10 be deemed to be in compliance with the prudent investor rule
11 set forth in the Uniform Prudent Investor Act; and

12 (2) the New Mexico finance authority shall not
13 be held liable for investments made pursuant to this subsection
14 that do not provide a return on investment that is comparable
15 to other differential rate investments made pursuant to the
16 Severance Tax Bonding Act.

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

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

6 SECTION 11. REPEAL.--Laws 2020, Chapter 75, Section 1 is
7 repealed.

8 SECTION 12. EMERGENCY.--It is necessary for the public
9 peace, health and safety that this act take effect immediately.