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SENATE BILL 3

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Jacob R. Candelaria

AN ACT

RELATING TO ECONOMIC RECOVERY; CHANGING THE NAME OF THE SMALL BUSINESS RECOVERY ACT OF 2020 TO THE SMALL BUSINESS RECOVERY ACT; CHANGING THE DEFINITIONS OF "QUALIFYING SMALL BUSINESS" AND "NONPROFIT CORPORATION" PURSUANT TO THE SMALL BUSINESS RECOVERY ACT; EXTENDING THE DEADLINE TO APPLY FOR A SMALL BUSINESS RECOVERY LOAN; DELAYING THE REVERSION OF THE SMALL BUSINESS RECOVERY LOAN FUND; CHANGING THE TERMS OF SMALL BUSINESS RECOVERY LOANS; ALLOWING A RECIPIENT OF A PREVIOUS SMALL BUSINESS RECOVERY LOAN TO REFINANCE THE LOAN SUBJECT TO THE TERMS OF THIS 2021 ACT; INCREASING THE AMOUNT OF THE SEVERANCE TAX PERMANENT FUND INVESTED PURSUANT TO THE SMALL BUSINESS RECOVERY ACT; DECLARING AN EMERGENCY.

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

SECTION 1. Section 6-32-1 NMSA 1978 (being Laws 2020 (1st .219078.4

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1 S.S.), Chapter 6, Section 1) is amended to read:

2 "6-32-1. SHORT TITLE.--~~[Sections 1 through 7 of this act]~~
3 Chapter 6, Article 32 NMSA 1978 may be cited as the "Small
4 Business Recovery Act [~~of 2020~~]."

5 SECTION 2. Section 6-32-2 NMSA 1978 (being Laws 2020 (1st
6 S.S.), Chapter 6, Section 2) is amended to read:

7 "6-32-2. DEFINITIONS.--As used in the Small Business
8 Recovery Act [~~of 2020~~]:

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

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

13 (1) a business's total expenses for a taxable
14 year [~~2019~~], excluding expenses deducted pursuant to Section
15 179 of the United States Internal Revenue Code of 1986, as that
16 section may be amended or renumbered, and expenses for
17 depreciation and bonus depreciation deducted pursuant to the
18 United States Internal Revenue Code of 1986, as determined from
19 the business's federal income tax return for a taxable year
20 [~~2019, less the amount of any loan obtained by the business~~
21 ~~pursuant to Section 1102 of the federal Coronavirus Aid,~~
22 ~~Relief, and Economic Security Act]; and~~

23 (2) twelve;

24 C. "community development financial institution"
25 means a legal entity operating within the state that is

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1 certified as a community development financial institution by
2 the federal community development financial institutions fund;

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

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

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

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

17 (1) ~~[has closed or reduced operations]~~ can
18 demonstrate, in a manner provided by the authority, that it has
19 sustained a substantial decline in gross revenue or a
20 substantial disruption to its operations due to the public
21 health ~~[order]~~ orders issued by the secretary of health ~~[on~~
22 ~~March 23, 2020]~~ and related to the coronavirus disease 2019
23 public health emergency;

24 (2) had an annual ~~[gross]~~ net revenue of less
25 than five million dollars (\$5,000,000) as determined from the

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1 business's federal income tax return for taxable year 2019; and
2 ~~[(3) during the months of April and May 2020,~~
3 ~~experienced one of the following:~~

4 ~~(a) for a business entity other than a~~
5 ~~nonprofit corporation, a decline in the business's monthly~~
6 ~~gross receipts by more than thirty percent from the business's~~
7 ~~monthly gross receipts for that month in 2019, as reported~~
8 ~~monthly by the business to the taxation and revenue department;~~
9 ~~or~~

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

18 ~~(4)] (3)~~ is organized and operated as a
19 nonprofit corporation or is owned as follows:

20 (a) for a sole proprietorship, one
21 hundred percent of the assets of the business are owned or
22 leased by a New Mexico resident; ~~[and]~~

23 (b) for a corporation ~~[partnership,~~
24 ~~joint venture, limited liability company, limited partnership~~
25 ~~or other business entity, at least eighty percent of the total~~

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1 ~~voting power of the entity and at least eighty percent of the~~
2 ~~total value of the equity is owned by one or more New Mexico~~
3 ~~residents; and] or limited liability company, a business with~~
4 ~~its principal office and a majority of its full-time employees~~
5 ~~located in New Mexico; or~~

6 (c) for a limited partnership, a
7 business with its principal place of business and eighty
8 percent of its assets located in New Mexico;

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

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

17 I. "nonprofit corporation" means an [entity
18 ~~organized pursuant to Section 501(c)(3) or 501(c)(6) of the~~
19 ~~Internal Revenue Service Code] organization that has been~~
20 ~~granted exemption from the federal income tax by the United~~
21 ~~States commissioner of internal revenue as an organization~~
22 ~~described in Section 501(c)(3), 501(c)(6) or 501(c)(8) or as~~
23 ~~veterans' organizations described in Section 501(c) of the~~
24 ~~United States Internal Revenue Code of 1986 and subject to the~~
25 ~~provisions of the Nonprofit Corporation Act."~~

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1 SECTION 3. Section 6-32-3 NMSA 1978 (being Laws 2020 (1st
2 S.S.), Chapter 6, Section 3) is amended to read:

3 "6-32-3. SMALL BUSINESS RECOVERY LOAN FUND--CREATED--
4 FUNDING SCHEDULE.--

5 A. The "small business recovery loan fund" is
6 created in the authority. The fund consists of appropriations,
7 gifts, grants, deposits, transfers and donations to the fund.
8 Money in the fund is appropriated to the authority to
9 administer the provisions of the Small Business Recovery Act
10 [~~of 2020~~]. The authority shall administer the fund. Balances
11 remaining in the fund at the end of fiscal year [~~2022~~] 2024
12 shall revert to the severance tax permanent fund. The
13 authority may expend no more than one percent of the balance of
14 the fund for administering the Small Business Recovery Act [~~of~~
15 ~~2020~~].

16 B. Upon the effective date of this [~~2020~~] 2021 act,
17 the authority and the state investment council shall coordinate
18 to develop a funding schedule to ensure that sufficient
19 funding, as provided for in Section [~~10 of this 2020 act~~]
20 7-27-5.15 NMSA 1978, is made available to the authority to
21 carry out the provisions of the Small Business Recovery Act [~~of~~
22 ~~2020~~]."

23 SECTION 4. Section 6-32-4 NMSA 1978 (being Laws 2020 (1st
24 S.S.), Chapter 6, Section 4) is amended to read:

25 "6-32-4. LOANS--TERMS.--

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1 A. The authority shall receive and review
2 applications for small business recovery loans pursuant to the
3 Small Business Recovery Act [~~of 2020~~]. The authority shall
4 review all small business recovery loan applications in the
5 order in which the completed applications were received and
6 shall provide a determination to the applicant as soon as
7 practicable. The authority shall make loans to qualifying
8 small businesses; provided that funds are available and the
9 qualifying small business meets the requisite creditworthiness,
10 as determined by the authority. The authority shall adopt
11 rules to govern the application procedures and requirements for
12 disbursing loans under the Small Business Recovery Act [~~of~~
13 ~~2020~~], including requirements consistent with the purpose of
14 that act for determining the eligibility of qualifying small
15 businesses for loans; provided that the authority:

16 (1) shall not create additional requirements
17 for eligibility other than those provided by that act; and

18 (2) may issue rules to permit a business that
19 does not have a record of actual losses, but can otherwise
20 satisfy the requirements of the Small Business Recovery Act, to
21 apply for a small business recovery loan.

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

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1 C. The authority may use funding made available for
2 the Small Business Recovery Act [~~of 2020~~] to contract with a
3 loan servicer to assist in carrying out the provisions of the
4 Small Business Recovery Act [~~of 2020~~], including 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 recovery
13 loans in accordance with the following:

14 (1) the loan amount shall be in an amount
15 equal to [~~two~~] three hundred percent of the qualifying small
16 business's average adjusted monthly business expenses from the
17 previous calendar or fiscal year; provided that a business that
18 applies for a loan in calendar year 2021 may use the business's
19 average adjusted monthly business expenses from taxable year
20 2019; and provided further that the maximum loan amount shall
21 be no greater than [~~seventy-five thousand dollars (\$75,000)~~]
22 one hundred fifty thousand dollars (\$150,000);

23 (2) the terms of the loan shall require that
24 the loan recipient:

25 (a) use a minimum of eighty percent of

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1 the proceeds of the loan for: 1) ordinary and necessary
2 business expenses, including capital expenses, other than
3 compensation for employees who own equity in the business; 2)
4 making adaptations or improvements to assets, including real
5 property, that are necessary due to the coronavirus disease
6 2019 public health emergency to protect the public health; and
7 3) purchasing or improving any assets for the purpose of
8 developing and growing the qualifying small business's e-
9 commerce production and sales capacity;

10 (b) provide a written certification
11 signed by an appropriate officer of the qualifying small
12 business that certifies that: 1) the officer understands that
13 the business is receiving a loan under the Small Business
14 Recovery Act ~~[of 2020]~~ that must be repaid by the business with
15 interest under the terms of the loan agreement; 2) all
16 documents submitted in support of the loan application are true
17 and accurate to the best of the officer's knowledge; ~~[3) the~~
18 ~~officer has a reasonable basis to believe that, as of the date~~
19 ~~of origination of the loan and receipt of the loan proceeds,~~
20 ~~the business does not expect to permanently cease business~~
21 ~~operations or file for bankruptcy; 4)] 3) prior to the issuance~~
22 of the public health order issued by the secretary of health on
23 March 23, 2020, the business was current on all obligations
24 pursuant to the Income Tax Act, the Corporate Income and
25 Franchise Tax Act, the Withholding Tax Act, the Gross Receipts

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1 and Compensating Tax Act and the Unemployment Compensation Law
2 applicable to the business's operations; and [~~5~~] 4) all loan
3 proceeds will be used for purposes as provided in the Small
4 Business Recovery Act [~~of 2020~~], including that no more than
5 twenty percent of the proceeds may be used as compensation for
6 employees who own equity in the business; and

7 (c) provide the authority with ongoing
8 information relevant to the reporting requirements of the
9 authority provided in Section [~~7 of the Small Business Recovery~~
10 ~~Act of 2020~~] 6-32-7 NMSA 1978;

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

14 (4) the application for a loan must be
15 received no later than December 31, [~~2020~~] 2022.

16 E. The authority may exercise any power provided to
17 the authority in the New Mexico Finance Authority Act to assist
18 in the administration of this; provided that the power is
19 consistent with the provisions of [~~this act~~] the Small Business
20 Recovery Act."

21 SECTION 5. Section 6-32-5 NMSA 1978 (being Laws 2020 (1st
22 S.S.), Chapter 6, Section 5) is amended to read:

23 "6-32-5. REPAYMENT.--

24 A. Small business recovery loans shall be made for
25 an initial loan period of [~~three~~] up to thirty years, as

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1 determined by the authority. The loans shall bear an annual
2 interest rate equal to one-half of the *Wall Street Journal*
3 prime rate on the date the loan is made; provided that no
4 interest shall accrue during the first three years of the loan.

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

19 C. Receipts from the repayment of principal or
20 interest accrued on the loans made pursuant to the Small
21 Business Recovery Act ~~[of 2020]~~ shall be deposited in the
22 severance tax permanent fund.

23 D. No provision in a small business recovery loan
24 or the evidence of indebtedness of the loan shall include a
25 penalty or premium for prepayment of the balance of the

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1 indebtedness."

2 SECTION 6. Section 6-32-6 NMSA 1978 (being Laws 2020 (1st
3 S.S.), Chapter 6, Section 6) is amended to read:

4 "6-32-6. SMALL BUSINESS TECHNICAL ASSISTANCE--SERVICE
5 PROVIDERS.--

6 A. A qualified small business with an annual gross
7 revenue of five hundred thousand dollars (\$500,000) or less
8 that applies for and receives a small business recovery loan
9 and that is receiving technical assistance from a service
10 provider is eligible to receive additional funding in the
11 amount of one-half percent of the loan amount to pay the
12 service provider for continued technical assistance during the
13 term of the loan or until the service provider certifies to the
14 authority that the qualified small business no longer needs the
15 assistance of the service provider; provided that the:

16 (1) additional amount shall not be included in
17 the small business recovery loan and shall not require
18 repayment;

19 (2) additional amount shall be provided to the
20 service provider; and

21 (3) authority shall use funding made available
22 for the Small Business Recovery Act [~~of 2020~~] to provide the
23 service provider with the additional amount.

24 B. Nothing in this section shall be construed to
25 require a small business with an annual gross revenue of five

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1 hundred thousand dollars (\$500,000) or less to contract with or
2 use the services of a service provider to meet the
3 qualifications of a small business recovery loan."

4 SECTION 7. Section 6-32-7 NMSA 1978 (being Laws 2020 (1st
5 S.S.), Chapter 6, Section 7) is amended to read:

6 "6-32-7. REPORTS--CONFIDENTIALITY.--

7 A. Prior to October 1, 2021 and each October 1 for
8 the proceeding four years, the authority shall submit a report
9 to the legislature, the legislative finance committee, the New
10 Mexico finance authority oversight committee, the revenue
11 stabilization and tax policy committee and any other
12 appropriate legislative interim committee. The report shall
13 provide details regarding the loans made pursuant to the Small
14 Business Recovery Act [~~of 2020~~]. The report shall include:

15 (1) the total number of loans made pursuant to
16 that act;

17 (2) the total number of loan applications;

18 (3) the average amount of money provided to
19 loan applicants;

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

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

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

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

3 B. Information obtained by the authority regarding
4 individual loan applicants is confidential and not subject to
5 inspection pursuant to the Inspection of Public Records Act;
6 provided that nothing in this section shall prevent the
7 authority from disclosing broad demographic information and
8 information relating to the total amount of loans made, the
9 total outstanding balance of loans made pursuant to the Small
10 Business Recovery Act [~~of 2020~~] and the names of the loan
11 recipients."

12 SECTION 8. Section 7-27-5.15 NMSA 1978 (being Laws 1990,
13 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 fund
19 may be invested in New Mexico private equity funds or New
20 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.

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1 C. The state investment officer shall make
2 investments pursuant to Subsection A of this section only upon
3 approval of the council and within guidelines and policies
4 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 with
8 its principal office and a majority of its full-time employees
9 located in New Mexico or, in the case of a limited partnership,
10 a business with its principal place of business and eighty
11 percent of its assets located in New Mexico; and

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

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

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

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

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

20 (1) the investments are made:

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

25 (b) in a New Mexico aerospace business

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

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

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

24 (3) the investments represent no more than
25 fifty-one percent of the total investment capital in a

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

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

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

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

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

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

6 G. In addition to the investments provided for in
7 Subsections A and F of this section, the state investment
8 officer shall make a commitment to the New Mexico finance
9 authority to invest [~~the lesser of four hundred million dollars~~
10 ~~(\$400,000,000) or ten percent of the market value]~~ five hundred
11 million dollars (\$500,000,000) of the severance tax permanent
12 fund in investments made pursuant to the Small Business
13 Recovery Act [~~of 2020~~]; provided that:

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

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

23 H. The state investment officer shall report
24 semiannually on the investments made pursuant to this section.
25 Annually, a report shall be submitted to the legislature prior

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

12 SECTION 9. TEMPORARY PROVISION--REFINANCING OF PREVIOUS
13 LOANS.--For any small business recovery loan provided pursuant
14 to the New Mexico Small Business Recovery Act of 2020 made
15 prior to the effective date of this act, the New Mexico finance
16 authority shall permit the recipient of that loan to refinance
17 the loan subject to terms consistent with this 2021 act.

18 SECTION 10. EMERGENCY.--It is necessary for the public
19 peace, health and safety that this act take effect immediately.

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