AN ACT

RELATING TO ECONOMIC RECOVERY; CHANGING THE NAME OF THE SMALL BUSINESS RECOVERY ACT OF 2020 TO THE SMALL BUSINESS RECOVERY AND STIMULUS ACT; CHANGING CERTAIN DEFINITIONS WITHIN THE SMALL BUSINESS RECOVERY AND STIMULUS 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; PERMITTING THE REQUIREMENT OF A PERSONAL GUARANTEE OR COLLATERAL FOR CERTAIN LOANS; ALLOWING A RECIPIENT OF A PREVIOUS SMALL BUSINESS RECOVERY LOAN TO REFINANCE THE LOAN SUBJECT TO THE TERMS OF THIS ACT; INCREASING THE AMOUNT OF THE SEVERANCE TAX PERMANENT FUND INVESTED PURSUANT TO THE SMALL BUSINESS RECOVERY AND STIMULUS ACT; CLARIFYING CONFIDENTIALITY PROVISIONS; REPEALING SECTION 6-32-6 NMSA 1978 (BEING LAWS 2020 (1ST S.S.), CHAPTER 6, SECTION 6); 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 S.S.), Chapter 6, Section 1) is amended to read:

"6-32-1. SHORT TITLE.--Chapter 6, Article 32 NMSA 1978 may be cited as the "Small Business Recovery and Stimulus Act"."

SECTION 2. Section 6-32-2 NMSA 1978 (being Laws 2020

(1st S.S.), Chapter 6, Section 2) is amended to read:

"6-32-2. DEFINITIONS.--As used in the Small Business Recovery and Stimulus Act:

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

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

C. "non-employer business" means a qualifying small business that has no paid employees;

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

E. "qualifying small business" means a business or nonprofit corporation that:

(1) can demonstrate, as determined by the authority, that it has sustained a substantial decline in gross revenue or a substantial disruption to its operations due to the public health orders issued by the secretary of health and related to the coronavirus disease 2019 public health emergency;

(2) had an annual net revenue of less than five million dollars ($5,000,000) as determined by the

authority; and

(3) is organized and operated as a nonprofit corporation or is owned as follows:

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

(b) for a corporation, partnership, joint venture, limited liability company, limited partnership or other business entity, at least fifty-one percent of the total voting power of the entity and at least fifty-one percent of the total value of the equity is owned by one or more New Mexico residents or the business entity maintains a physical business location within the state and has employed at least ten full-time New Mexico resident employees at any time since January 1, 2019; and

F. "nonprofit corporation" means an organization that has been granted exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3), 501(c)(6), 501(c)(8), 501(c)(19) or 501(c)(23) of the United States Internal Revenue Code of 1986 and subject to the provisions of the Nonprofit Corporation Act."

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

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

FUNDING SCHEDULE.--

A. The "small business recovery loan fund" is created in the authority. The fund consists of appropriations, gifts, grants, deposits, transfers and donations to the fund. Money in the fund is appropriated to the authority to administer the provisions of the Small Business Recovery and Stimulus Act. The authority shall administer the fund. Balances remaining in the fund as of December 31, 2022 and not identified by the authority as necessary to administer the Small Business Recovery and Stimulus Act over the life of the loans provided pursuant to that act shall revert to the severance tax permanent fund. The authority may expend no more than two percent of the state investment council's commitment pursuant to Section 7-27-5.15 NMSA 1978 for administering the Small Business Recovery and Stimulus Act.

B. Upon the effective date of this 2021 act, the authority and the state investment council shall coordinate to develop a funding schedule to ensure that sufficient funding, as provided for in Section 7-27-5.15 NMSA 1978, is made available to the authority to carry out the provisions of the Small Business Recovery and Stimulus Act."

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

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

A. The authority shall receive and review applications for small business recovery loans pursuant to the Small Business Recovery and Stimulus Act. The authority may designate one or more application periods and shall review small business recovery loan applications received in each application period in the order in which the completed applications were received and shall provide a determination to the applicant within a reasonable time period after review. The authority shall make loans to qualifying small businesses; provided that funds are available and the qualifying small business satisfies credit and identification criteria, as determined by the authority. The authority shall adopt rules to govern the application procedures and requirements for disbursing loans under the Small Business Recovery and Stimulus Act, including requirements consistent with the purpose of that act for determining the eligibility of qualifying small businesses for loans; provided that the authority may issue rules to permit a business that does not have a record of actual losses, but can otherwise satisfy the requirements of the Small Business Recovery and Stimulus Act, to apply for a small business recovery loan.

B. The authority shall evaluate an application based on information received from the applicant as well as third-party credit and identification reports.

C. The authority shall make small business

recovery loans in accordance with the following:

(1) the loan amount shall be in an amount not to exceed three hundred percent of the qualifying small business's average monthly business expenses as determined by the authority; provided that the maximum loan amount shall be no greater than one hundred fifty thousand dollars ($150,000);

(2) the terms of the loan shall require that:

(a) for a loan recipient that is not a non-employer business, the recipient shall use a minimum of eighty percent of the proceeds of the loan for: 1) ordinary and necessary business expenses, including capital expenses, other than compensation for an individual who owns equity in the business; 2) making adaptations or improvements to assets, including real property, that are necessary due to the coronavirus disease 2019 public health emergency to protect the public health; and 3) purchasing or improving any assets for the purpose of developing and growing the qualifying small business's e-commerce production and sales capacity;

(b) for a loan recipient that is a non-employer business, the recipient shall use a minimum of fifty percent of the proceeds of the loan for: 1) ordinary and necessary business expenses, including capital expenses,

other than compensation for an individual who owns equity in the business; 2) making adaptations or improvements to assets, including real property, that are necessary due to the coronavirus disease 2019 public health emergency to protect the public health; and 3) purchasing or improving any assets for the purpose of developing and growing the qualifying small business's e-commerce production and sales capacity;

(c) the loan recipient provide a written certification signed by an appropriate officer of the qualifying small business that certifies that: 1) the officer understands that the business is receiving a loan under the Small Business Recovery and Stimulus Act that must be repaid by the business with interest under the terms of the loan agreement; 2) all documents submitted in support of the loan application and all statements and certifications made in the loan application are true and accurate to the best of the officer's knowledge; 3) prior to the issuance of the public health order issued by the secretary of health on March 23, 2020, the business was current on all obligations pursuant to the Income Tax Act, the Corporate Income and Franchise Tax Act, the Withholding Tax Act, the Gross Receipts and Compensating Tax Act and the Unemployment Compensation Law applicable to the business's operations; and 4) all loan proceeds will be used for purposes as provided in

the Small Business Recovery and Stimulus Act, including that no more than twenty percent of the proceeds may be used as compensation for employees who own equity in the business; and

(d) the loan recipient provide the authority with ongoing information relevant to the reporting requirements of the authority provided in Section 6-32-7 NMSA 1978;

(3) the terms of the loan shall not require that the qualifying small business provide a personal guarantee or collateral to secure a loan in the amount of seventy-five thousand dollars ($75,000) or less. For a loan in an amount greater than seventy-five thousand dollars ($75,000), the authority may require a personal guarantee or collateral to secure the amount of the loan greater than seventy-five thousand dollars ($75,000); provided that the authority shall define specific guidelines related to personal guarantees or collateral; and

(4) the application for a loan must be received no later than May 31, 2022.

D. The authority may exercise any power provided to the authority in the New Mexico Finance Authority Act to assist in the administration of the Small Business Recovery and Stimulus Act; provided that the power is consistent with the provisions of that act."

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

"6-32-5. REPAYMENT.--

A. Small business recovery loans shall be made for loan periods not to exceed ten years, as determined by the authority. The loans shall bear an annual interest rate equal to one-half of the *Wall Street Journal* prime rate on the date the loan is made; provided that no interest shall accrue during the first year of the loan.

B. Interest shall begin to accrue on a small business recovery loan on the first anniversary of the funding date of the loan. Thereafter, for the next two years, the authority shall require interest-only payments on a schedule determined by the authority. Beginning on the third anniversary of the funding date of the loan, payment on the outstanding principal and interest on the loan shall be due on a schedule determined by the authority for the remainder of the loan period.

C. Receipts from the repayment of principal or interest accrued on the loans made pursuant to the Small Business Recovery and Stimulus Act shall be transferred from the authority to the state investment council and deposited in the severance tax permanent fund.

D. No provision in a small business recovery loan or the evidence of indebtedness of the loan shall include a

penalty or premium for prepayment of the balance of the indebtedness."

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

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

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

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

(2) the total number of loan applications;

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

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

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

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

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

B. Information obtained by the authority regarding individual loan applicants, including information used to analyze an application, is confidential and not subject to inspection pursuant to the Inspection of Public Records Act; provided that nothing in this section shall prevent the authority from disclosing broad demographic information and information relating to the total amount of loans made, the total outstanding balance of loans made pursuant to the Small Business Recovery and Stimulus Act and the names of the loan recipients."

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

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

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

B. In making investments pursuant to Subsection A of this section, the council shall make investments in New Mexico private equity funds or New Mexico businesses whose investments or enterprises enhance the economic

development objectives of the state.

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

D. As used in this section:

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

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

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

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

(c) has at least one full-time manager with at least three years of professional experience in assessing the growth prospects of businesses or evaluating

business plans;

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

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

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

(1) the investments are made:

(a) in conjunction with cooperative investment agreements with parties that have demonstrated abilities and relationships in making investments in new,

emerging or expanding businesses;

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

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

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

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

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

(b) is necessary to protect the investment; and

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

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

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

G. In addition to the investments provided for in Subsections A and F of this section, the state investment officer shall make a commitment to the New Mexico finance authority to invest five hundred million dollars ($500,000,000) of the severance tax permanent fund in investments made pursuant to the Small Business Recovery and Stimulus Act; provided that:

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

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

H. The state investment officer shall report

semiannually on the investments made pursuant to this section. Annually, a report shall be submitted to the legislature prior to the beginning of each regular legislative session and a second report no later than October 1 each year to the legislative finance committee, the revenue stabilization and tax policy committee and any other appropriate interim committee. Each report shall provide the amounts invested in each New Mexico private equity fund, as well as information about the objectives of the funds, the companies in which each private equity fund is invested and how each private equity investment enhances the economic development objectives of the state. Each report also shall provide the amounts invested in each New Mexico business."

SECTION 8. TEMPORARY PROVISION--REFINANCING OF PREVIOUS LOANS.--For any small business recovery loan provided pursuant to the New Mexico Small Business Recovery Act of 2020 made prior to the effective date of this act, the New Mexico finance authority shall permit the recipient of that loan to refinance the loan subject to terms consistent with this 2021 act.

SECTION 9. REPEAL.--Section 6-32-6 NMSA 1978 (being Laws 2020 (1st S.S.), Chapter 6, Section 6) is repealed.

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

immediately.