

BYLAWS

OF

SMALL BUSINESS INVESTMENT CORPORATION

I

MEMBERS

The Corporation will not have Members as defined in the New Mexico Nonprofit Corporation Act. The Corporation may have participants or contributors with membership designations but these participants or contributors will not be Members as defined in the Nonprofit Corporation Act.

II

POWERS OF CORPORATION

A. Creation. The “Small Business Investment Corporation,” d/b/a New Mexico Small Business Investment Corporation, was created pursuant to Section 58-29-4 NMSA 1978, as a nonprofit, independent, public corporation for the purpose of creating new job opportunities by making direct or indirect equity or debt investments, via cooperative agreements with financial professionals, to support new or expanding New Mexico businesses. The Corporation will have all of the powers granted to it by the New Mexico Small Business Investment Act.

B. Not a State Agency. The Corporation will not be considered a state agency for any purpose. The Corporation is exempted from the provisions of the Personnel Act and the Procurement Code [13-128 to 13-1-117 and 13-1-118 to 13-1-199 NMSA 1978].

III

BOARD OF DIRECTORS

A. Duties and Powers. The Board of Directors shall have control and management of the business and affairs of the corporation. The act of the directors shall in all cases be the act of the Board, provided a quorum is present. The directors may adopt such rules and regulations for the conduct of their meetings and the management of the corporation as they may deem proper, not inconsistent with law or these Bylaws.

B. Number, Tenure, Qualifications, Designation and Appointment:
The Board will consist of:

1. The State Treasurer or his designee;
2. The State Investment Officer or his designee;
3. Six members appointed or elected as provided in this Article.

C. Each Director will hold office for the length of his term in office or until a successor is appointed and begins service on the Board, who serve at the pleasure of the Governor.

D. The Governor's appointees to the Board will be public members who have general expertise in small business management, but they will not be employed by or represent small businesses receiving equity investments from the Corporation.

E. No two members of the Board will be employed by or represent the same company or institution.

F. The Board will annually elect a chairman from among its members and will elect those other officers it determines necessary for the performance of its duties.

G. The power of set the policies and procedures for the Corporation is vested in the Board. The Board may perform all acts necessary or appropriate to exercise that power.

H. Public members of the Board will be reimbursed for attending meetings of the Board as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and will receive no other compensation, perquisite or allowance.

I. Public members of the Board are appointed public officials of the State while carrying out their duties and activities under the Small Business Investment Act [58-29-1 to 58-29-6 NMSA 1978]. The Directors and the employees of the Corporation are not liable personally, either jointly or severally, for any debt or obligation created or incurred by the corporation or for any act performed or obligation entered into in an official capacity when done in good faith, without intent to defraud and in connection with the administration, management or conduct of the Corporation or affairs relating to it.

J. The Board will conduct an annual audit of the books of accounts, funds and securities of the Corporation to be made by a competent and independent firm of certified public accountants. A copy of the audit report will be filed with the President. The audit will be open to the public for inspection.

K. Meetings: The Corporation is subject to the Open Meetings Act. The Board's Open Meetings Act Resolution is attached as Exhibit A

IV

OFFICERS

A. Number, Tenure, Qualification, and Election: The Officers of the Corporation will be a Chairman, a/k/a President, Vice-Chairman, Secretary and Treasurer, each of whom will be elected annually by the Board at its Annual Meeting to serve until their successors are elected and qualified. The Board will select officers from among its members. An officer may be removed with or without cause by the Board, or may resign. Vacancies and newly created offices will be filled by the Board. One person may hold more than one office. Officers will perform the duties and have the powers assigned by the Board, incident to the office and provided in these Bylaws.

B. Chairman: The Chairman will be the chief executive officer of the Corporation, will preside at all Corporation meetings and, when authorized, will execute and deliver documents in the name of the Corporation. It is recognized that the Chairman is not an employee of the Corporation but a citizen performing a public service to the Corporation and to the State of New Mexico without compensation. Because of the limitations on the amount of time the Chairman is able to devote to the Corporation, various activities and affairs of the Corporation may be delegated by the Chairman to an individual selected by the Board. The Chairman will, however,

1. require that a report be delivered at least once a month to the board on investment results and related matters;
2. act for the Corporation in collecting and disbursing money necessary to administer the Corporation and conduct its business;
3. sign contracts and incur obligations on behalf of the Corporation;
4. perform all acts necessary to exercise power, authority or jurisdiction over the Corporation to discharge its functions and fulfill its responsibilities;
5. make investments pursuant to the Small Business Investment Act [58-29-1] to 58-29-6-NMSA 1978] and upon approval of the Board; and
6. submit an annual report, independently audited in accordance with generally accepted procedures governing annual reports, by October 1 of year to the Governor, the Legislative Finance committee and any other appropriate legislative committee indicating the business done by the Corporation during the previously completed fiscal year and containing a statement of the resources and liabilities of the Corporation. The report will include:
 - (a) the average rate of return enjoyed by the Corporation on invested assets;

(b) recommendations concerning desired changes in the Corporation to promote its prompt and efficient administration of policies and claims;

(c) recommendations to the Legislature and the Governor regarding the continued operation of the Corporation; and

(d) any other information the President deems appropriate.

B. Vice-Chairman: The Vice-Chairman during the absence, disability or failure to act, of the Chairman, will conduct the affairs of the organization and the responsibilities of the Chairman as outlined above.

C. Secretary and Assistants: The Secretary, or any Assistant Secretary during the absence, disability or failure to act, of the Secretary, will keep and have custody of the seal, books and records of the Corporation and the minutes of all meetings, will give all Notices required and, when authorized, will execute, attest, seal and deliver documents of the Corporation.

D. Treasurer and Assistants: The Treasurer, or any Assistant Treasurer during the absence, disability or failure to act of the Treasurer, will be responsible for keeping correct and complete books and records of account for the Corporation.

V

EXECUTIVE DIRECTOR

The Board may employ an Executive Director upon such terms and conditions as it deems proper, who will be responsible for the conduct of the Corporation's business within the prescribed policies of the Board. The Executive Director will hire, assign, supervise and terminate any employees of the Corporation in accordance with the policies, positions and salaries established by the Board. In lieu of employing an Executive Director, the Board may select and engage an individual to perform various functions and activities on behalf of the Corporation as they shall deem appropriate.

VI

BOARD COMMITTEES

The Board, by resolution adopted by a majority of the Directors, may designate and appoint Committees each of which will consist of at least two Directors, and will have and may exercise the authority of the Board, except to the extent limited by law. A majority of the members of a Committee may fix its rules of procedure. An action by a Committee will be reported to the Board at a Board meeting succeeding such action and will be subject to revision by the Board although no rights of third parties will be affected by any such revision. The designation and appointment of any Committee and the delegation thereto of authority will not

relieve the board of Directors; or any individual Director, of any responsibility imposed upon the Board or a Director.

VII

WAIVER OF NOTICE

Whenever any notice is required to be given to any Director, a waiver thereof in writing signed by the person entitled to the notice is equivalent to the notice. The attendance of a Director at a meeting constitutes a waiver of notice of the meeting except when attendance is for the sole purpose of objecting because the meeting is not lawfully called or convened.

VIII

MONETARY MATTERS

A. Funds and Borrowing: The depository for corporate funds, the persons entitled to draw against these funds, the persons entitled to borrow on behalf of the corporation, and the manner of accomplishing these matters will be determined by the Board, to the extent determined by the Small Investment Act.

B. Compensation and Pecuniary Benefit: No Director or Officer will receive, directly or indirectly, any income, profit or pecuniary benefit from the Corporation; except that the Corporation may reimburse them from corporate funds upon proper documentation for expenses incurred on behalf of the Corporation, and may reasonably compensate them for services rendered in furtherance of the corporate purposes.

C. Provision Against Sharing in Corporate Earnings: No Director or Officer will receive at any time any of the net earnings of the Corporation, or share in any of the corporate assets upon dissolution of the Corporation.

IX

INDEMNITY

The Corporation will indemnify and defend each Director and Officer of the Corporation, and their heirs, legal representatives and devisees, against all loss, liability or expense (including costs and attorney's fees actually and reasonably incurred) in connection with the defense of any action, suit or proceeding, civil or criminal, in which the Director or Officer is made a party by reason of being or having been an Officer or Director. The indemnification may include any amounts paid to satisfy a judgment or to compromise or settle a claim. The Director or Officer will not be indemnified if the Director or Officer is adjudged to have been guilty of willful misconduct or recklessness in the performance of duty to the Corporation. Advance indemnification may be allowed of a Director or Officer for expenses to be incurred in

connection with the defense of the action, suit or proceeding, if the Director or Officer agrees to reimburse the Corporation if it is subsequently determined that the Director or Officer was not entitled to indemnification by reason of willful misconduct or recklessness in the performance of duty to the Corporation.

X

INTERESTED PARTIES

No transaction of the Corporation will be affected because a Director or Officer of the Corporation is interested in the transaction, unless the transaction is in violation of the proscriptions in the Articles of Incorporation or these Bylaws against inurement of monetary benefit. Such interested parties will be counted for quorum purposes, but may not vote when the Corporation considers the transaction. Such interested parties will not be liable to the Corporation for the party's profits, or the Corporation's losses, from the transaction.

XI

SEAL AND MEMBERSHIP CERTIFICATE

The Board may, but need not, adopt a form of seal to be used by the Corporation, but the failure to use a corporate seal does not affect the validity of any instrument or any action taken in reliance thereon or in pursuance thereof.

XII

AMENDMENTS

These Bylaws may be altered, amended or repealed by the Board.

OFFICERS' CERTIFICATE

We certify the foregoing to be a true copy of the Bylaws duly adopted by the Corporation on _____.

President

Secretary