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HOUSE BILL 233

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

John A. Heaton

AN ACT

**RELATING TO TAXATION; ENACTING THE WATER TECHNOLOGY ASSISTANCE
TAX CREDIT ACT; PROVIDING FOR TECHNICAL ASSISTANCE BY NATIONAL
LABORATORIES TO RESOLVE WATER ISSUES IN NEW MEXICO.**

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

Section 1. SHORT TITLE. -- This act may be cited as the
"Water Technology Assistance Tax Credit Act".

Section 2. PURPOSE. -- The purpose of the Water Technology
Assistance Tax Credit Act is to:

**A. assist residents, communities, governments and
businesses in New Mexico to resolve water issues by using the
technology and expertise of the national laboratories;**

**B. encourage a national laboratory to form
strategic partnerships with New Mexico entities to apply
national laboratory technologies and expertise to support its**

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1 partners in resolving water issues;

2 C. leverage water programs at the national
3 laboratories for the direct benefit of New Mexico's residents;

4 D. sustain economic development and the quality of
5 life in New Mexico; and

6 E. assist water providers, managers and users in
7 New Mexico in developing and implementing new technologies that
8 will create new water sources through treating impaired water,
9 increasing water-use efficiency and improving water management.

10 Section 3. DEFINITIONS.--As used in the Water Technology
11 Assistance Tax Credit Act:

12 A. "contractor" means an entity that may enter into
13 a contract with a national laboratory to support the national
14 laboratory in providing assistance in resolving water issues in
15 New Mexico and that is:

16 (1) an individual or legal entity, including a
17 gas, water or electric utility owned or operated by a county,
18 municipality or other subdivision of the state; or

19 (2) a national, federal, state or tribal
20 governmental unit, subdivision or agency;

21 B. "council" means the water assistance advisory
22 council;

23 C. "department" means the taxation and revenue
24 department;

25 D. "national laboratory" means a prime contractor

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1 designated as a national laboratory by act of congress that is
2 operating a taxable entity in New Mexico;

3 E. "partner" means an individual or a legal entity;
4 or a unit, a subdivision or an agency of the state or of a
5 tribal government:

6 (1) that is located in New Mexico;

7 (2) that uses, provides, administers or
8 impacts water resources in the state; and

9 (3) that has entered into an agreement with a
10 national laboratory to receive water-related assistance;

11 F. "qualified expenditure" means money expended to
12 provide water-related assistance to a partner by a national
13 laboratory or one of its contractors involved in the water
14 assistance program;

15 G. "tribal" means of or pertaining to an Indian
16 nation, tribe or pueblo located wholly or partially in New
17 Mexico; and

18 H. "water assistance program" means all activities
19 entered into to provide water-related assistance to develop new
20 water sources to partners by a national laboratory or its
21 contractors.

22 Section 4. WATER ASSISTANCE PROGRAM --To receive a tax
23 credit pursuant to the Water Technology Assistance Tax Credit
24 Act, a national laboratory shall:

25 A. establish a water assistance program, identify

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1 partners and provide water-related assistance;

2 B. create funding and financial reporting
3 mechanisms for the water assistance program;

4 C. create a separate account for each partner
5 involved in the water assistance program with the national
6 laboratory or its contractors;

7 D. consult with the council to seek advice on
8 improvements in the operation of the national laboratory's
9 water assistance program for the benefit of the state or of
10 local or tribal governments or communities;

11 E. establish a methodology to use contractors as
12 necessary to provide water-related assistance to partners;

13 F. produce a report within thirty days of any
14 calendar quarter, to be provided to the department, containing:

15 (1) the name and address, including the
16 county, of each partner assisted during the calendar quarter;

17 (2) certification from the partner that the
18 partner could not receive the same service for a reasonable
19 cost from private industry;

20 (3) documentation by the national laboratory
21 that it exerted due diligence to determine that the technology
22 assistance is not otherwise available to the partner at a
23 reasonable cost from private industry; and

24 (4) the qualified expenditures attributed to
25 each partner;

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1 (5) a description of the water-related
2 assistance provided or received; and

3 (6) the name of the provider of the water-
4 related assistance to the partner; and

5 G. produce by June of each year an annual report on
6 the activities of the preceding calendar year for an
7 appropriate legislative interim committee that:

8 (1) identifies the partners involved in the
9 water assistance program, including:

10 (a) the water-related assistance
11 provided to those partners;

12 (b) the projects initiated, continuing
13 and completed; and

14 (c) an assessment of the benefits
15 derived by the state or by local or tribal governments or
16 communities due to the water-related assistance provided; and

17 (2) includes the expenditures of the water
18 assistance program by the qualified taxpayer or its contractors
19 and the amount of tax credit claimed by the qualified taxpayer
20 for the calendar year covered in the report.

21 Section 5. WATER-RELATED ASSISTANCE--PROVISION--
22 PURPOSES.--Water-related assistance shall be provided to create
23 new sources of water through treating impaired water,
24 increasing water-use efficiency or improving water management
25 and shall be either:

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1 A. technical assistance, including information
2 sharing, analysis, laboratory testing and educational outreach,
3 provided to a partner that is implementing or planning to
4 implement technologies to create new sources of water; or

5 B. technology development and demonstration
6 assistance provided to a partner, including field testing and
7 computer-generated evaluation, model development, engineering
8 analysis and design, that facilitate maturation and
9 demonstration of emerging technologies that have high potential
10 for creation of new sources of water within New Mexico.

11 Section 6. TAX CREDIT AGAINST GROSS RECEIPTS TAXES--
12 RATE--AGGREGATE LIMIT.--

13 A. A tax credit to be known as the "water
14 technology tax credit", in an amount equal to the qualified
15 expenditures made to provide water-related assistance by a
16 qualified taxpayer, may be claimed against the amounts owed
17 pursuant to the Gross Receipts and Compensating Tax Act by the
18 qualified taxpayer; provided that:

19 (1) the water-related assistance is rendered
20 to a partner responsible for water located in New Mexico;

21 (2) the qualified expenditures have been made
22 prior to the application for the tax credit;

23 (3) the qualified expenditures do not exceed
24 the aggregate limit set forth in Subsection B of this section
25 for the calendar year;

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1 (4) the tax credit for the qualified
2 expenditure is taken:

3 (a) against gross receipts and
4 compensating taxes paid in the calendar year in which the
5 water-related assistance is provided; and

6 (b) on each month's gross receipts and
7 compensating tax return filed by the national laboratory
8 against gross receipts or compensating taxes due to the state
9 and shall not impact a local government tax distribution;

10 (5) the partner certifies to the taxpayer that
11 the water-related assistance provided is not otherwise
12 available at a reasonable cost through private industry;

13 (6) the qualified expenditures for the water-
14 related assistance described in Subsection A of Section 5 of
15 the Water Technology Assistance Tax Credit Act are limited to
16 one hundred thousand dollars (\$100,000) per partner for a
17 calendar year; and

18 (7) the qualified expenditures for the water-
19 related assistance described in Subsection B of Section 5 of
20 the Water Technology Assistance Tax Credit Act are limited to
21 four hundred thousand dollars (\$400,000) per partner for a
22 calendar year.

23 B. The total aggregate amount of tax credits
24 claimed in a calendar year by a qualified taxpayer pursuant to
25 the Water Technology Assistance Tax Credit Act shall not exceed

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1 seven million dollars (\$7,000,000).

2 Section 7. QUALIFIED EXPENDITURES. -- A qualified
3 expenditure is:

4 A. money expended to provide water-related
5 assistance to a partner by a national laboratory or one of its
6 contractors involved in a water assistance program; and

7 B. limited to:

8 (1) employee salaries and wages, fringe
9 benefits and employer payroll taxes;

10 (2) administrative costs related to the
11 provision of water-related assistance totaling no more than
12 seventy-five percent of the qualified expenditures made
13 pursuant to Paragraph (1) of this subsection;

14 (3) in-state travel expenses, including per
15 diem and mileage at the internal revenue service standard
16 rates;

17 (4) supplies and services of contractors
18 related to the provision of water-related assistance; and

19 (5) expenses related to operation of the
20 council.

21 Section 8. COUNCIL-- CREATION-- MEMBERSHIP-- ADMINISTRATIVE
22 SUPPORT-- CHAIR. --

23 A. The "water assistance advisory council" is
24 created.

25 B. The council shall provide advice to assist

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1 national laboratories in:

2 (1) identification of water needs of the state
3 or local or tribal governments or communities;

4 (2) identification of partners within the
5 state that would benefit from receiving water-related
6 assistance;

7 (3) review of the annual water assistance
8 program status report prior to its presentation to an
9 appropriate legislative interim committee; and

10 (4) development for the water assistance
11 program of a five-year plan, to be updated annually, that
12 provides long-term guidance for the water assistance program
13 and ensures water-related assistance that is beneficial to the
14 state or to local or tribal governments or communities.

15 C. Membership of the council shall consist of one
16 representative appointed by each of the following:

17 (1) the secretary of energy, minerals and
18 natural resources;

19 (2) the state engineer;

20 (3) the secretary of environment;

21 (4) the secretary of economic development;

22 (5) the director of the New Mexico department
23 of agriculture;

24 (6) the director of the New Mexico rural water
25 users association;

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1 (7) the executive director of the New Mexico
2 municipal league;

3 (8) the executive director of the New Mexico
4 farm and livestock bureau;

5 (9) the executive director of the New Mexico
6 oil and gas association;

7 (10) the director of the New Mexico water
8 resources research institute;

9 (11) the president of the university of New
10 Mexico;

11 (12) the president of the New Mexico institute
12 of mining and technology; and

13 (13) the president of New Mexico state
14 university.

15 D. In addition to the council members identified in
16 Subsection C of this section, the governor shall appoint four
17 council members who are selected from a list submitted by the
18 leadership of the Indian nations, tribes and pueblos located in
19 New Mexico.

20 E. In addition to the council members appointed
21 pursuant to Subsections C and D of this section, by majority
22 vote of the council, two additional council members may be
23 added representing water-related entities not otherwise
24 represented.

25 F. Administrative support shall be provided for the

1 council by personnel of the national laboratory initiating the
2 water assistance program.

3 G. The chair of the council shall be the director
4 of the New Mexico water resources research institute. The
5 council shall meet at the call of the chair but not less than
6 two times per calendar year.

7 Section 9. ADMINISTRATION OF ACT.--The department shall
8 administer the Water Technology Assistance Tax Credit Act
9 pursuant to the Tax Administration Act.

10 Section 10. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is July 1, 2003.

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