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FISCAL IMPACT REPORT

SPONSOR	<u>SCORC</u>	ORIGINAL DATE	<u>2/7/08</u>	HB	<u></u>
		LAST UPDATED	<u></u>		
SHORT TITLE	<u>Public Peace, Health, Safety and Welfare</u>	SB	<u>564/SCORCS</u>		
		ANALYST	<u>Francis</u>		

SOURCES OF INFORMATION

LFC Files

Responses Received From
State Investment Council (SIC)

SUMMARY

Synopsis of Bill

The Senate Corporations and Transportation Committee substituted Senate Bill 564. The substitute allows the State Investment Council (SIC) to invest up to 0.5 percent of the severance tax permanent fund in technology commercialization of patents held or business plans designed by former employees of Los Alamos or Sandia National Laboratories. No single investment can be more than \$1 million. SIC can make either equity or debt investments provided that the private equity investment advisory committee (PEIAC), a committee of SIC, has reviewed the investment and either a business incubator, technology research collaborative or the University of New Mexico patent office has recommended the investment.

There is no effective date so by default the effective date is May 14, 2008.

FISCAL IMPLICATIONS

The fiscal impacts are uncertain due to the nature of the type of investment. SIC have a few programs that appear to function similarly to the one proposed here. SIC makes zero interest loans to film production companies and then takes a "participation percentage" in the film. SIC relies on a film advisor and the PEIAC for recommendation and review of individual projects. Another program is the New Mexico Co-investment Partnership which SIC invests directly in companies in New Mexico. In this program, SIC relies on Sun Mountain, the general partner for the NM CIP, and the PEIAC to make recommendations. Either of these models could be used for the former lab employee investment program.

All of the loans in the film loan program are guaranteed by letters of credit from banks or corporations with significant assets and so none of the principle has been lost through the program. On the other hand, the program is several years old, has invested in 25 films or

television programs for a total of \$210.8 million, \$41.6 million of which has been paid back, but has only realized a return of \$805 thousand (includes \$500,000 advance on profits and \$304,717 for interest payments).

SIGNIFICANT ISSUES

SIC already has the ability through the NM Co Investment Partnership and the NM Private Equity Investment program (NMPEIP) to make investments in technology transfer businesses. SIC also must invest one percent of the market value of the severance tax permanent fund in the Small Business Investment Corporation which typically makes smaller investments than the NMPEIP and may be an appropriate vehicle for these investments.

SIC:

New Mexico is home to the following groups, all of which strive to assist very early stage technologies find investors and entrepreneurs interested in transforming ideas into viable marketable products: The New Mexico Angels Investing Group; New Mexico Connect (which specifically targets LANL technology); MESA Ventures; Coronado Ventures Forum; Technology Ventures Corporation; New Mexico Community Capital; New Mexico Venture Capital Association and the Flywheel Gap-Fund.

It should be noted that seed stage investments of this kind are among the riskiest around, usually take several years to mature and exit, and also often need the benefit of the entrepreneurial expertise a seasoned venture capitalist brings to the table. Without additional nurturing and business acumen, even the most fantastic technology will not grow to survive the challenging journey to marketplace and profitability.

ADMINISTRATIVE IMPLICATIONS

SIC:

SB 564 does not indicate how due diligence would be performed on potential patent investments by the SIC. The SIC assumes it would have to hire an advisor to undertake what could be a considerable task requiring significant resources and expertise. The SIC estimates, if taken on a case by case basis, each potential investment will cost an estimated \$25-\$50k to research and vet. Legal documents could cost another \$25k per investment. With investments being capped at \$1M or even smaller, these costs present a sizeable hurdle for any investment prior to it achieving profitability.

The Council does not currently have resources, internal or external, which would enable it to perform the required due diligence necessary for investment.

TECHNICAL ISSUES

The substitute includes all former lab employees without regard to length of service or whether the employee was laid off, fired for cause, voluntarily quit or retired from the labs.

There may also be questions about the patents and whether they are owned by the employee or the labs. If SIC were to invest in a plan without these issues being clear, it could expose the state to litigation.

The UNM Patent Office typically only deals with patents held by the university and may not be the right place for recommendations for investments outside of the University. The Science and Technology Corporation may be able to provide recommendations but this entity also deals with technology transfer from UNM.

According to SIC, it appears that the bill may exclude current lab employees looking to bring technology out of the lab by limiting the guidelines to “former” lab employees. Also, language regarding patents being “held” is a bit confusing, as it is unclear whether that would include licensing of those patents or if it would require patent ownership.

ALTERNATIVES

A fund could be set up for the Economic Development Department (EDD) that could be used for making grants and loans to patent holders.

An alternative advisory group could be made up of several of the state’s higher education institutions rather than just the UNM patent office.

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