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SENATE BILL 99

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

Michael Padilla and Carl Trujillo

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; AMENDING A SECTION OF THE SEVERANCE TAX BONDING ACT TO REQUIRE THE STATE INVESTMENT COUNCIL TO INVEST AT LEAST ONE-FOURTH PERCENT OF THE MARKET VALUE OF THE SEVERANCE TAX PERMANENT FUND IN NEW MEXICO BUSINESSES THAT ARE APPROVED BY THE TECHNOLOGY RESEARCH COLLABORATIVE; TRANSFERRING THE FISCAL ADMINISTRATION OF THE TECHNOLOGY RESEARCH COLLABORATIVE FROM THE NEW MEXICO INSTITUTE OF MINING AND TECHNOLOGY TO THE ECONOMIC DEVELOPMENT DEPARTMENT; CHANGING THE COMPOSITION OF THE BOARD OF THE TECHNOLOGY RESEARCH COLLABORATIVE; MAKING AN APPROPRIATION; REPEALING A SECTION OF THE NMSA 1978.

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

SECTION 1. Section 7-27-5.15 NMSA 1978 (being Laws 1990, Chapter 126, Section 5, as amended) is amended to read:

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1 "7-27-5.15. NEW MEXICO PRIVATE EQUITY FUNDS AND BUSINESS
2 INVESTMENTS.--

3 A. No more than nine percent of the market value of
4 the severance tax permanent fund may be invested in New Mexico
5 private equity funds or New Mexico businesses under this
6 section. At least one-fourth percent of the market value of
7 the severance tax permanent fund shall be invested in New
8 Mexico business enterprises that are approved by the technology
9 research collaborative.

10 B. In making investments pursuant to Subsection A
11 of this section, the council shall make investments in New
12 Mexico private equity funds or New Mexico businesses whose
13 investments or enterprises enhance the economic development
14 objectives of the state.

15 C. The state investment officer shall make
16 investments in New Mexico private equity funds pursuant to
17 Subsection A of this section only upon approval of the council,
18 upon review of the recommendation of the private equity
19 investment advisory committee and within guidelines and
20 policies established by the council.

21 D. As used in this section:
22 (1) "New Mexico business" means, in the case
23 of a corporation or limited liability company, a business with
24 its principal office and a majority of its full-time employees
25 located in New Mexico or, in the case of a limited partnership,

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1 a business with its principal place of business and eighty
2 percent of its assets located in New Mexico; and

3 (2) "New Mexico private equity fund" means a
4 limited partnership, limited liability company or corporation
5 organized and operating in the United States and maintaining an
6 office staffed by a full-time investment officer in New Mexico
7 that:

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

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

15 (c) has at least one full-time manager
16 with at least three years of professional experience in
17 assessing the growth prospects of businesses or evaluating
18 business plans and who has established permanent residency in
19 the state;

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

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1 investors nationwide for businesses in the state; and

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

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

14 (1) the investments are made:

15 (a) in conjunction with cooperative
16 investment agreements with parties that have demonstrated
17 abilities and relationships in making investments in new,
18 emerging or expanding businesses;

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

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

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

19 (3) the investments represent no more than
20 [~~fifty-one~~] forty-nine percent of the total investment capital
21 in a business; provided, however, that nothing in this
22 subsection prohibits the ownership of more than [~~fifty-one~~]
23 forty-nine percent of the total investment capital in a New
24 Mexico business if the additional ownership interest:

25 (a) is due to foreclosure or other

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1 action by the state investment officer pursuant to agreements
2 with the business or other investors in that business;

3 (b) is necessary to protect the
4 investment; and

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

7 F. The state investment officer shall make a
8 commitment to the small business investment corporation
9 pursuant to the Small Business Investment Act to invest one
10 percent of the market value of the severance tax permanent fund
11 to create new job opportunities by providing capital for land,
12 buildings or infrastructure for facilities to support new or
13 expanding businesses and to otherwise make investments to
14 create new job opportunities to support new or expanding
15 businesses in a manner consistent with the constitution of New
16 Mexico. On July 1 of each year, the state investment officer
17 shall determine whether the invested capital in the small
18 business investment corporation is less than one percent of the
19 market value of the severance tax permanent fund. If the
20 invested capital in the small business investment corporation
21 equals less than one percent of the market value of the
22 severance tax permanent fund, further commitments shall be made
23 until the invested capital is equal to one percent of the
24 market value of the fund.

25 G. The state investment officer shall report

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

14 SECTION 2. [NEW MATERIAL] TECHNOLOGY RESEARCH

15 COLLABORATIVE CREATED--PURPOSE.--

16 A. The "technology research collaborative" is
17 created. The economic development department shall be the
18 fiscal agent for the collaborative.

19 B. Participating institutions associated with the
20 collaborative shall include national laboratories, other major
21 research institutes and all of the post-secondary educational
22 institutions in New Mexico.

23 C. The purpose of the collaborative is to:

24 (1) establish advanced technology centers
25 based on the wealth of scientific and technical talent that

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1 exists in the participating institutions;

2 (2) foster the development and creation of new
3 intellectual property for the state, encourage new
4 opportunities for business and increase jobs;

5 (3) commercialize the intellectual property
6 that is created; and

7 (4) help create a work force to support
8 enterprises based on the intellectual property that is created.

9 D. Intellectual property created by an employee or
10 agent of an institution participating with the collaborative
11 shall be owned by that institution. Intellectual property
12 created jointly by the collaborative and an institution shall
13 be owned jointly by those entities. If the intellectual
14 property is created using federal funds, the applicable federal
15 laws and regulations shall govern the ownership.

16 E. The collaborative may receive appropriations
17 from the legislature through the economic development
18 department and may receive any other items of value from public
19 or private sources.

20 F. The "board of the technology research
21 collaborative" is created. The board shall consist of nine
22 members as follows:

23 (1) the presidents, or their designees, of the
24 university of New Mexico, New Mexico state university and New
25 Mexico institute of mining and technology;

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1 (2) four members at large, appointed by the
2 governor with the consent of the senate, who include persons
3 that have expertise in the law, investment banking and venture
4 capital;

5 (3) the director of Sandia national
6 laboratories or the director's designee; and

7 (4) the director of Los Alamos national
8 laboratory or the director's designee.

9 G. Appointed members shall serve for two-year terms
10 at the pleasure of the governor. Members shall serve until
11 their successors have been appointed. The governor may fill
12 any vacancy on the board for the remainder of an unexpired
13 term.

14 H. The board may elect a chair and other officers
15 as it deems necessary to carry out its duties. A majority of
16 the members of the board shall constitute a quorum for the
17 transaction of business, and the board shall meet monthly.
18 Board members shall not vote by proxy. Meetings of the board
19 shall be exempt from provisions of the Inspection of Public
20 Records Act.

21 I. Public members of the board shall receive per
22 diem and mileage pursuant to the Per Diem and Mileage Act and
23 shall receive no other compensation, perquisite or allowance.

24 J. The board shall:

25 (1) employ a director and other staff, who

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1 shall be exempt from the provisions of the Personnel Act, as
2 the board deems necessary to provide continuity and management
3 of the collaborative;

4 (2) prepare annual reports to the legislature
5 on the expenditures and progress of the collaborative and
6 performance results of investments approved by the
7 collaborative made by the state investment council pursuant to
8 Section 7-27-5.15 NMSA 1978; and

9 (3) review and approve or disapprove equity
10 investments in New Mexico businesses by the state investment
11 council pursuant to Section 7-27-5.15 NMSA 1978.

12 SECTION 3. APPROPRIATION.--One hundred thousand dollars
13 (\$100,000) is appropriated from the general fund to the
14 economic development department for expenditure in fiscal year
15 2015 to support the activities of the technology research
16 collaborative. Any unexpended or unencumbered balance
17 remaining at the end of fiscal year 2015 shall revert to the
18 general fund.

19 SECTION 4. REPEAL.--Section 21-11-8.6 NMSA 1978 (being
20 Laws 2013, Chapter 130, Section 1) is repealed.