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HOUSE BILL 262

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

INTRODUCED BY

John A. Heaton

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; ENACTING THE NEW MEXICO  
RESEARCH APPLICATIONS ACT; PROVIDING FOR A NONPROFIT  
CORPORATION TO INTERACT WITH BUSINESS AND GOVERNMENT ENTITIES,  
UNIVERSITIES, PRIVATE FOUNDATIONS AND NATIONAL LABORATORIES FOR  
THE PURPOSE OF FOSTERING ECONOMIC DEVELOPMENT IN THE AREAS OF  
TECHNOLOGY AND INTELLECTUAL PROPERTY; DECLARING AN EMERGENCY.

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

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1  
through 17 of this act may be cited as the "New Mexico Research  
Applications Act".

Section 2. [NEW MATERIAL] PURPOSES.--The purposes of the  
New Mexico Research Applications Act are to:

- A. promote the public welfare and prosperity of the  
people of New Mexico;

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1 B. foster economic development in the area of  
2 intellectual property within New Mexico;

3 C. attract investments that will drive  
4 technological innovations in New Mexico;

5 D. create high-value technology jobs in New Mexico  
6 with appropriately trained employees to fill such jobs;

7 E. forge links, critical partnerships and  
8 collaboration among New Mexico's business communities,  
9 universities, private foundations, national laboratories and  
10 government through the development of a research applications  
11 center;

12 F. support educational initiatives in science,  
13 technology, engineering and mathematics in the state to ensure  
14 the availability of the future workforce required to meet the  
15 goals of the New Mexico Research Applications Act; and

16 G. engage in cooperative ventures related to the  
17 use of research and development applications, including the use  
18 of research and development applications as a means of  
19 enhancing state and local resource development and promoting  
20 innovative technological advances in the areas of economic,  
21 community and workforce development; education; science;  
22 technology; engineering; mathematics; research and development;  
23 conservation; and health care, within New Mexico.

24 Section 3. [NEW MATERIAL] DEFINITIONS.--As used in the  
25 New Mexico Research Applications Act:

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1           A. "board" means the board of directors of the  
2 research applications center;

3           B. "bond" means a bond, note or other evidence of  
4 indebtedness issued by the research applications center;

5           C. "department" means the economic development  
6 department;

7           D. "research applications center" means the  
8 nonprofit corporation created pursuant to the Nonprofit  
9 Corporation Act and the New Mexico Research Applications Act;

10          E. "technological innovations" includes research,  
11 development, prototype assembly, manufacturing, patenting,  
12 licensing, marketing and sale of inventions, ideas, practices,  
13 applications, processes, machines and technology and related  
14 property rights of all kinds; and

15          F. "university" means:

16               (1) a New Mexico educational institution named  
17 in Article 12, Section 11 of the constitution of New Mexico;

18               (2) a community college organized pursuant to  
19 the Community College Act; or

20               (3) a technical and vocational institute  
21 organized pursuant to the Technical and Vocational Institute  
22 Act.

23          Section 4. [NEW MATERIAL] RESEARCH APPLICATIONS CENTER--  
24 FORMATION--BOARD OF DIRECTORS.--

25          A. The department shall, pursuant to the Nonprofit  
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1 Corporation Act, incorporate a corporation with the name "New  
2 Mexico research applications center"; provided that, if that  
3 name is not available, the department shall select another name  
4 that reflects the purposes of the New Mexico Research  
5 Applications Act.

6 B. The articles of incorporation shall include:

7 (1) provisions for appointing the board  
8 pursuant to Subsection C of this section;

9 (2) provisions requiring that board vacancies  
10 shall be filled by the governor;

11 (3) a statement that the corporation will have  
12 no members;

13 (4) provisions that prohibit any board action  
14 inconsistent with the New Mexico Research Applications Act;

15 (5) provisions that prohibit the board from  
16 increasing the number of directors;

17 (6) a plan of distribution of the assets  
18 remaining after dissolution or final liquidation of the  
19 corporation. The plan shall require that, after all  
20 liabilities and obligations are paid, all funds of the  
21 corporation shall be deposited in the general fund and all  
22 other assets shall be distributed to the department of finance  
23 and administration; and

24 (7) any other provisions deemed necessary by  
25 the department to ensure compliance with the New Mexico

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1 Research Applications Act.

2 C. The board of directors shall be appointed by the  
3 governor. The board shall include representatives with  
4 relevant experience from state government, local governments,  
5 businesses located in New Mexico, universities, private  
6 foundations, national laboratories and investment advisors.  
7 The board shall be appointed in a manner that reflects the  
8 geographic, cultural and ethnic diversity of this state.

9 Section 5. [NEW MATERIAL] RESEARCH APPLICATIONS CENTER--  
10 POWERS.--As directed by the board, the research applications  
11 center may:

12 A. acquire, by lease or purchase, the land,  
13 buildings, facilities, improvements and equipment necessary to  
14 achieve the purposes of the New Mexico Research Applications  
15 Act;

16 B. lease to any person any part or all of the land,  
17 buildings, facilities, improvements and equipment acquired  
18 pursuant to Subsection A of this section;

19 C. enter into contracts, joint powers agreements,  
20 memoranda of understanding and other agreements with public and  
21 private entities in order to carry out the purposes of the New  
22 Mexico Research Applications Act;

23 D. enter into business arrangements for  
24 technological innovations with one or more business entities,  
25 governmental entities, universities, private foundations,

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1 national laboratories or other persons;

2 E. independently, or in conjunction with another  
3 person, form corporations pursuant to the Nonprofit Corporation  
4 Act or the Business Corporation Act for technological  
5 innovations purposes;

6 F. otherwise conduct, sponsor, finance and contract  
7 as necessary to further technological innovations;

8 G. purchase, take, receive or otherwise acquire;  
9 own; hold; dispose of; use; or otherwise deal in and with  
10 property, including an interest in or ownership of intangible  
11 personal property, intellectual property or technological  
12 innovations;

13 H. sell, convey, pledge, exchange, transfer or  
14 otherwise dispose of its assets and properties for  
15 consideration upon terms and conditions that the board shall  
16 determine;

17 I. issue bonds pursuant to the New Mexico Research  
18 Applications Act or otherwise incur liabilities or borrow money  
19 at rates of interest that the board may determine;

20 J. receive and administer grants, contracts and  
21 private gifts;

22 K. invest and reinvest its funds;

23 L. employ officers and employees that it deems  
24 necessary, set their compensation and prescribe their duties;

25 M. enter into agreements with insurance carriers to

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1 insure against any loss in connection with its operations;

2 N. authorize retirement programs and other benefits  
3 for salaried officers and employees;

4 O. enter into license agreements and contracts  
5 involving intellectual property and technological innovations,  
6 including agreements for patents, copyrights, franchises and  
7 trademarks; and

8 P. do anything else the board deems appropriate to  
9 further the purposes of the New Mexico Research Applications  
10 Act either directly or indirectly.

11 Section 6. [NEW MATERIAL] APPLICABILITY OF OTHER LAWS.--

12 A. Except as otherwise provided in the New Mexico  
13 Research Applications Act, the research applications center  
14 shall not be deemed to be the state, or one of its agencies,  
15 instrumentalities, institutions or political subdivisions for  
16 the purpose of applying any other laws, including those  
17 relating to personnel, procurement of goods and services,  
18 meetings of the board, gross receipts taxes, disposition or  
19 acquisition of property, capital outlays, per diem and mileage  
20 and inspection of records.

21 B. The research applications center shall be  
22 deemed:

23 (1) an agency of the state when applying laws  
24 relating to the furnishing of goods and services by the  
25 research applications center to the state or any other agency,

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1 political subdivision or institution of the state; and

2 (2) a governmental entity for purposes of the  
3 Tort Claims Act, provided that the research applications center  
4 may enter into agreements with insurance carriers to insure  
5 against risk in connection with its operations even though the  
6 risk may be included among the risks covered by the Tort Claims  
7 Act.

8 Section 7. [NEW MATERIAL] REVENUE BONDS.--The research  
9 applications center may, from time to time, issue negotiable  
10 revenue bonds. The proceeds from the sale of bonds shall be  
11 used to carry out the provisions of the New Mexico Research  
12 Applications Act, as specified in the board resolution  
13 authorizing the issuance of the bonds, and to fund reserves  
14 necessary to pay interest on the bonds and to pay necessary  
15 expenses of issuing the bonds. All bonds may be issued in one  
16 or more series. The bonds of each issue shall be dated and  
17 bear interest as prescribed by the board. The bonds shall  
18 mature serially, or otherwise, not later than forty years from  
19 their date and may be redeemable before maturity at the option  
20 of the research applications center at prices and under terms  
21 and conditions fixed by the board in its resolution authorizing  
22 the issuance of the bonds. The resolution shall also determine  
23 the form of the bonds, including the form of any interest  
24 coupons to be attached thereto, and shall fix the denominations  
25 of the bonds and the place of payment of the principal and

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1 interest thereon. The bonds shall be executed on behalf of the  
2 research applications center as special obligations of the  
3 research applications center payable only from the funds  
4 specified in the authorizing resolution and shall not be a debt  
5 of the state or any of its agencies, instrumentalities,  
6 institutions or political subdivisions. After registration and  
7 delivery to the purchasers, the bonds are incontestable and  
8 constitute special obligations of the research applications  
9 center and the bonds and coupons are negotiable instruments  
10 under the laws of this state. The bonds may be sold at public  
11 or private sale by the research applications center at prices  
12 and in accordance with procedures and terms the board  
13 determines to be advantageous and reasonably obtainable.

14 Section 8. [NEW MATERIAL] REFUNDING BONDS.--The research  
15 applications center may issue and sell at public or private  
16 sale revenue bonds to refund outstanding revenue bonds by  
17 exchange, immediate or prospective redemption, cancellation or  
18 escrow, including the escrow of debt service funds accumulated  
19 for payment of outstanding bonds, or any combination thereof,  
20 when, in its opinion, such action will be beneficial to the  
21 research applications center.

22 Section 9. [NEW MATERIAL] PLEDGE OF ASSETS OR  
23 REVENUES.--The pledge of any assets or revenues of the research  
24 applications center to the payment of the principal of or the  
25 interest on any bonds shall be valid and binding from the time

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1 that the pledge is made and the assets or revenues shall  
2 immediately be subject to a lien without any physical delivery  
3 or further act. The lien shall be valid and binding as against  
4 all parties having claims of any kind in tort, contract or  
5 otherwise against the research applications center,  
6 irrespective of whether such parties have notice thereof.  
7 Nothing in this section shall be construed to prohibit the  
8 research applications center from selling any assets subject to  
9 any such pledge except to the extent that the sale may be  
10 restricted by the resolution providing for the issuance of the  
11 bonds.

12 Section 10. [NEW MATERIAL] PLEDGE TO BONDHOLDERS.--The  
13 state pledges to and agrees with the holders of any bonds  
14 issued under the New Mexico Research Applications Act that the  
15 state will not limit or alter the rights vested in the research  
16 applications center by that act to fulfill the terms of any  
17 agreement made with the bondholders or in any way impair the  
18 rights and remedies of the bondholders until the bonds,  
19 together with the interest thereon, with interest on any unpaid  
20 installments of interest and all costs and expenses in  
21 connection with any action or proceedings by or on behalf of  
22 the bondholders are fully met and discharged. The research  
23 applications center is authorized to include this pledge and  
24 agreement of the state in any agreement with the bondholders.

25 Section 11. [NEW MATERIAL] SUIT MAY BE BROUGHT TO COMPEL

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1 PERFORMANCE.--Any holder of bonds or any person or officer  
2 being a party in interest may sue to enforce and compel the  
3 performance of the provisions of the New Mexico Research  
4 Applications Act or the board resolution under which the bonds  
5 were issued.

6 Section 12. [NEW MATERIAL] BONDS TAX EXEMPT.--All revenue  
7 bonds shall be exempt from taxation by the state or any of its  
8 political subdivisions.

9 Section 13. [NEW MATERIAL] LEGAL INVESTMENTS.--Revenue  
10 bonds are legal investments for any person or board charged  
11 with the investment of any public funds and are acceptable as  
12 security for any deposit of public money.

13 Section 14. [NEW MATERIAL] ANNUAL AUDIT AND REPORT.--The  
14 board shall contract annually with an independent certified  
15 public accountant to perform an examination and audit of the  
16 accounts and books of the research applications center,  
17 including its receipts, disbursements, contracts, leases,  
18 sinking funds, investments and any other records and papers  
19 relating to its financial standing. The certified public  
20 accountant shall make a determination as to whether the  
21 research applications center has complied with the provisions  
22 of the New Mexico Research Applications Act. The person  
23 performing the audit shall furnish copies of the audit report  
24 to the governor; the public regulation commission, where they  
25 shall be placed on file and made available for inspection by

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1 the general public; and the legislative finance committee.

2 Section 15. [NEW MATERIAL] CONFLICTS OF INTEREST.--

3 A. If any director, officer or employee of the  
4 research applications center is interested either directly or  
5 indirectly or is an officer or employee of or has any ownership  
6 interest in a legal entity interested directly or indirectly in  
7 a contract or potential contract with the research applications  
8 center, except for any agency, instrumentality, institution or  
9 political subdivision of the state, the interest shall be  
10 disclosed to the board and shall be set forth in the minutes of  
11 the board. The director, officer or employee having the  
12 interest shall not participate on behalf of the research  
13 applications center in the authorization of the contract.

14 B. No director, officer or employee of the research  
15 applications center or state officer shall accept any  
16 gratuities in connection with the issuance of bonds under the  
17 New Mexico Research Applications Act, nor shall any such  
18 individual be reimbursed for expenses incident to the issuing  
19 of bonds except such expenses as are reimbursed as provided  
20 under the rules of the board.

21 C. Nothing in this section shall prohibit an  
22 officer, director or employee of a financial institution from  
23 participating as a member of the board in setting general  
24 policies of the research applications center, nor shall any  
25 provision of this section be construed as prohibiting a

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1 financial institution of New Mexico from making loans  
2 guaranteed pursuant to the provisions of the New Mexico  
3 Research Applications Act because an officer, director or  
4 employee of the financial institution serves as a member of the  
5 board.

6 D. A person who violates the provisions of this  
7 section is guilty of a misdemeanor and, upon conviction, shall  
8 be punished pursuant to Section 31-19-1 NMSA 1978.

9 Section 16. [NEW MATERIAL] CONTRACTS INVOLVING PUBLIC  
10 EMPLOYEES.--Except as provided in Section 17 of the New Mexico  
11 Research Applications Act, the research applications center  
12 shall not enter into any contract involving services or  
13 property of a value in excess of twenty thousand dollars  
14 (\$20,000) with an employee of the state or one of its agencies,  
15 instrumentalities, institutions or political subdivisions or  
16 with a business in which the employee has a controlling  
17 interest unless the governor or the governor's designee makes a  
18 determination, in writing, that the employee is able to provide  
19 services that are not readily available from another person or  
20 is able to provide services that are less expensive or of  
21 higher quality than are otherwise available.

22 Section 17. [NEW MATERIAL] TRANSFER OF TECHNOLOGY.--

23 A. Notwithstanding the provisions of Section 16 of  
24 the New Mexico Research Applications Act, Section 10-16-7,  
25 13-1-190, 21-1-17 or 21-1-35 NMSA 1978 or of any other statute,  
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1 ordinance or policy regulating the conduct of public employees,  
2 an officer or employee of the state or one of its agencies,  
3 instrumentalities, institutions or political subdivisions may,  
4 subject to Subsection B of this section, apply to the secretary  
5 of economic development for permission to establish and  
6 maintain a substantial interest in a private entity that  
7 provides or receives equipment, material, supplies or services  
8 in connection with the research applications center in order to  
9 facilitate the transfer of technology developed by the officer  
10 or employee from the research applications center to commercial  
11 and industrial enterprises for economic development.

12 B. The secretary of economic development may grant  
13 the permission only if all of the following conditions are met:

14 (1) the employer of the officer or employee  
15 certifies to the secretary that the employer does not object to  
16 the proposed relationship;

17 (2) the officer or employee provides a  
18 detailed description of the officer's or employee's interest in  
19 the private entity;

20 (3) the nature of the proposed undertaking is  
21 fully described;

22 (4) the officer or employee demonstrates, to  
23 the satisfaction of the secretary, that the proposed  
24 undertaking may benefit the economy of this state;

25 (5) the officer or employee demonstrates to

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1 the satisfaction of the secretary that the proposed undertaking  
2 will not adversely affect research, public service or  
3 instructional activities at any educational institution; and

4 (6) the officer's or employee's interest in  
5 the private entity or benefit from the interest will not  
6 adversely affect any substantial state interest.

7 C. The board may establish policies for the  
8 implementation of this section.

9 Section 18. Section 10-16-7 NMSA 1978 (being Laws 1967,  
10 Chapter 306, Section 7, as amended) is amended to read:

11 "10-16-7. CONTRACTS INVOLVING PUBLIC OFFICERS OR  
12 EMPLOYEES.--A state agency shall not enter into a contract for  
13 services, construction or items of tangible personal property  
14 with a public officer or employee of the state, with the family  
15 of the public officer or employee or with a business in which  
16 the public officer or employee or the family of the public  
17 officer or employee has a substantial interest unless the  
18 public officer or employee has disclosed the public officer's  
19 or employee's substantial interest and unless the contract is  
20 awarded pursuant to the Procurement Code, except that the  
21 potential contractor shall not be eligible for a sole source or  
22 small purchase contract; provided that this section does not  
23 apply to a contract of official employment with the state or to  
24 contracts made pursuant to the provisions of the University  
25 Research Park and Economic Development Act or the New Mexico

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1 Research Applications Act. A person negotiating or executing a  
2 contract on behalf of a state agency shall exercise due  
3 diligence to ensure compliance with the provisions of this  
4 section."

5 Section 19. Section 13-1-190 NMSA 1978 (being Laws 1984,  
6 Chapter 65, Section 163, as amended) is amended to read:

7 "13-1-190. UNLAWFUL EMPLOYEE PARTICIPATION PROHIBITED.--

8 A. Except as permitted by the University Research  
9 Park and Economic Development Act or the New Mexico Research  
10 Applications Act, it is unlawful for any state agency or local  
11 public body employee, as defined in the Procurement Code, to  
12 participate directly or indirectly in a procurement when the  
13 employee knows that the employee or any member of the  
14 employee's immediate family has a financial interest in the  
15 business seeking or obtaining a contract.

16 B. An employee or any member of an employee's  
17 immediate family who holds a financial interest in a disclosed  
18 blind trust shall not be deemed to have a financial interest  
19 with regard to matters pertaining to that trust."

20 Section 20. Section 21-1-17 NMSA 1978 (being Laws 1889,  
21 Chapter 138, Section 68, as amended) is amended to read:

22 "21-1-17. INTEREST IN CONTRACTS BY BOARD MEMBERS OR  
23 EMPLOYEES PROHIBITED.--No employee or member of a board of  
24 regents of [~~any~~] a state educational institution shall have  
25 [~~any~~] direct or indirect financial interest in any contract for

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1 building or improving any of that state educational institution  
2 or for the furnishing of supplies or services to that  
3 institution except as permitted pursuant to the University  
4 Research Park and Economic Development Act or the New Mexico  
5 Research Applications Act, or unless it complies with  
6 provisions of the Governmental Conduct Act and the Procurement  
7 Code."

8 Section 21. Section 21-1-35 NMSA 1978 (being Laws 1923,  
9 Chapter 148, Section 1415, as amended) is amended to read:

10 "21-1-35. SALES BY BOARDS, OFFICERS OR EMPLOYEES  
11 PROHIBITED--PARTIES TO CONTRACTS RECEIVING COMMISSION OR  
12 PROFIT--PENALTY.--No board of regents of a state educational  
13 institution, no member of a board and no school official or  
14 teacher, either directly or indirectly, shall sell to [~~any~~] a  
15 state educational institution that [~~he~~] the person is connected  
16 with by reason of being a member of a board of regents of a  
17 state educational institution or to [~~any~~] a school official or  
18 teacher, any school books, school furniture, equipment,  
19 apparatus or any other kind of school supplies, sell property  
20 insurance or life insurance to [~~any~~] an employee of that state  
21 educational institution or do any work under contract, nor  
22 shall any such board or members thereof or school officers or  
23 teachers receive any commission or profit on account thereof,  
24 and all such persons are prohibited from being parties directly  
25 or indirectly to any such contract or transaction; provided

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1 that the provisions of this section shall not apply to  
2 contracts that are entered into pursuant to the provisions of  
3 the University Research Park and Economic Development Act or  
4 the New Mexico Research Applications Act or that comply with  
5 provisions of the Governmental Conduct Act and the Procurement  
6 Code. Any person violating the provisions of this section  
7 shall be fined not exceeding one thousand dollars (\$1,000) or  
8 imprisoned not exceeding one year in the penitentiary of New  
9 Mexico or be fined and imprisoned as set forth in this section  
10 in the discretion of the court."

11 Section 22. EMERGENCY.--It is necessary for the public  
12 peace, health and safety that this act take effect immediately.

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