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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; REPEALING THE TECHNOLOGY RESEARCH COLLABORATIVE AND
TRANSFERRING ITS PROPERTY TO THE ECONOMIC DEVELOPMENT
DEPARTMENT; DECLARING AN EMERGENCY.

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

Section 1. SHORT TITLE.--Sections 1 through 10 of this
act may be cited as the "New Mexico Research Applications
Act".

Section 2. 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;
- B. foster economic development in the area of
intellectual property within New Mexico;
- C. attract investments that will drive
technological innovations in New Mexico;
- D. create high-value technology jobs in New Mexico
with appropriately trained employees to fill such jobs;

1 E. forge links, critical partnerships and
2 collaboration among New Mexico's business communities,
3 universities, private foundations, national laboratories and
4 government through the development of a research applications
5 center;

6 F. support educational initiatives in science,
7 technology, engineering and mathematics in the state to
8 ensure the availability of the future work force required to
9 meet the goals of the New Mexico Research Applications Act;
10 and

11 G. engage in cooperative ventures related to the
12 use of research and development applications, including the
13 use of research and development applications as a means of
14 enhancing state and local resource development and promoting
15 innovative technological advances in the areas of economic,
16 community and work force development; education; science;
17 technology; engineering; mathematics; research and
18 development; conservation; and health care, within New
19 Mexico.

20 Section 3. DEFINITIONS.--As used in the New Mexico
21 Research Applications Act:

22 A. "board" means the board of directors of the
23 research applications center;

24 B. "department" means the economic development
25 department;

1 C. "research applications center" means the
2 nonprofit corporation created pursuant to the Nonprofit
3 Corporation Act and the New Mexico Research Applications Act;

4 D. "technological innovations" includes research,
5 development, prototype assembly, manufacturing, patenting,
6 licensing, marketing and sale of inventions, ideas,
7 practices, applications, processes, machines and technology
8 and related property rights of all kinds; and

9 E. "university" means:

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

13 (2) a community college organized pursuant
14 to the Community College Act; or

15 (3) a technical and vocational institute
16 organized pursuant to the Technical and Vocational Institute
17 Act.

18 Section 4. RESEARCH APPLICATIONS CENTER--FORMATION--
19 BOARD OF DIRECTORS--PUBLIC ACCESS TO MEETINGS AND MINUTES.--

20 A. The department shall, pursuant to the Nonprofit
21 Corporation Act and internal revenue service regulations
22 pertaining to nonprofit corporations, incorporate a
23 corporation with the name "New Mexico research applications
24 center"; provided that, if that name is not available, the
25 department shall select another name that reflects the

1 purposes of the New Mexico Research Applications Act.

2 B. The articles of incorporation shall include:

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

5 (2) provisions requiring that board
6 vacancies shall be filled by the appropriate appointing
7 authority;

8 (3) a statement that board members, subject
9 to the availability of funds, shall receive per diem and
10 mileage at the rate provided in the Per Diem and Mileage Act
11 for nonsalaried public officers and shall receive no other
12 compensation, perquisite or allowance;

13 (4) a statement that the corporation will
14 have no members;

15 (5) provisions that prohibit any board
16 action inconsistent with the New Mexico Research Applications
17 Act;

18 (6) provisions that prohibit the board from
19 increasing the number of directors;

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

1 finance and administration; and

2 (8) any other provisions deemed necessary by
3 the department to ensure compliance with the New Mexico
4 Research Applications Act.

5 C. The board of directors shall be appointed in a
6 manner that reflects the geographic, cultural and ethnic
7 diversity of this state and provides for representation of
8 the research institutions of this state. The board shall
9 consist of twelve members with relevant experience or
10 expertise in state government, local governments, businesses
11 located in New Mexico, universities, private foundations,
12 national laboratories or investments. The members shall be
13 as follows:

14 (1) the secretary of economic development;
15 (2) the secretary of higher education;
16 (3) the secretary of workforce solutions;
17 (4) the chair of the New Mexico council of
18 university presidents;

19 (5) the governor's science advisor;
20 (6) a member appointed by the governor, who
21 shall be a director of a national laboratory located in New
22 Mexico; and

23 (7) six members shall be appointed by the
24 legislature as follows:

25 (a) one member appointed by the speaker SB 205
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1 of the house of representatives, who shall represent the
2 business community;

3 (b) one member appointed by the
4 majority leader of the house of representatives, who shall
5 represent local governments;

6 (c) one member appointed by the
7 minority leader of the house of representatives, who shall be
8 a president of a New Mexico post-secondary public educational
9 institution;

10 (d) one member appointed by the
11 president pro tempore of the senate, who shall have expertise
12 in rural economic development;

13 (e) one member appointed by the
14 majority leader of the senate, who shall have expertise in
15 venture capital; and

16 (f) one member appointed by the
17 minority leader of the senate, who shall have expertise in
18 health care.

19 D. The appointed members shall serve terms of four
20 years except that, of the initial appointees, the member
21 appointed by the governor, the member appointed by the
22 speaker of the house of representatives, the member appointed
23 by the president pro tempore of the senate and the member
24 appointed by the minority leader of the house of
25 representatives shall be appointed for terms of two years.

1 E. The governor, with the advice and consent of
2 the senate, shall appoint one of the members as chair of the
3 board. Board members may designate an alternate from within
4 their organization or area of expertise to represent their
5 interest, if approved by the appointing authority.

6 F. All meetings, minutes of meetings and reports
7 of the board, the research applications center and any
8 corporations formed by the research applications center shall
9 be available and open to the public, except that portion of
10 meetings, minutes or reports in which business-sensitive
11 information, as determined by the board, is discussed.
12 Minutes of all meetings and reports of the research
13 applications center and any corporations formed by the
14 research applications center shall be provided by the board
15 to the legislative finance committee and any other interim or
16 standing legislative committees specified by the legislative
17 finance committee within one month of the date of the meeting
18 or date of the report.

19 G. The board shall hire a president who shall be
20 the chief administrative officer of the research applications
21 center.

22 Section 5. RESEARCH APPLICATIONS CENTER--POWERS.--As
23 directed by the board, the research applications center may:

24 A. acquire, by lease or purchase, the land,
25 buildings, facilities, improvements and equipment necessary

1 to achieve the purposes of the New Mexico Research
2 Applications Act;

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

6 C. enter into contracts, joint powers agreements,
7 memoranda of understanding and other agreements with public
8 and private entities in order to carry out the purposes of
9 the New Mexico Research Applications Act;

10 D. incur liabilities or borrow money at rates of
11 interest that the research applications center may determine;
12 provided that:

13 (1) any debt incurred shall be payable
14 solely from the money available to the research applications
15 center and does not create an obligation or indebtedness of
16 the state within the meaning of any constitutional provision;

17 (2) no breach of any contractual obligation
18 incurred pursuant to the New Mexico Research Applications Act
19 shall impose a pecuniary liability or a charge upon the
20 general credit or taxing power of the state, and any debt
21 incurred is not a general obligation for which the state's
22 full faith and credit is pledged; and

23 (3) the research applications center shall
24 not incur any debt greater than one million dollars
25 (\$1,000,000) or for a term longer than eight months without

1 the prior approval of the state board of finance;

2 E. enter into business arrangements to carry out
3 technological innovations with one or more business entities,
4 governmental entities, universities, private foundations,
5 national laboratories or other persons;

6 F. otherwise conduct, sponsor, finance and
7 contract 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. solicit, receive and administer grants,
18 contracts and gifts from federal, state and private sources;

19 J. invest and reinvest its funds;

20 K. employ officers and employees that it deems
21 necessary, set their compensation and prescribe their duties;

22 L. enter into agreements with insurance carriers
23 to insure against any loss in connection with its operations;

24 M. authorize retirement programs and other
25 benefits for salaried officers and employees;

1 N. create such enterprise funds, revolving funds
2 or other financial arrangements as it deems necessary to
3 carry out the purposes of the New Mexico Research
4 Applications Act; and

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

9 Section 6. APPLICABILITY OF OTHER LAWS.--

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

18 B. The research applications center shall be
19 deemed:

20 (1) an agency of the state when applying
21 laws relating to the furnishing of goods and services by the
22 research applications center to the state or any other
23 agency, political subdivision or institution of the state;

24 (2) a local public body for purposes of the
25 Procurement Code, except that the board may exempt a specific

1 procurement from the application of the Procurement Code if
2 it makes a finding that compliance with the Procurement Code
3 would impede the purposes of the New Mexico Research
4 Applications Act; and

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

11 Section 7. ANNUAL AUDIT AND REPORT.--

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

1 B. An annual report of the activities during the
2 previous fiscal year of the research applications center
3 shall be provided by the board to the legislative finance
4 committee at least ninety days in advance of each regular
5 legislative session. The report shall contain an operating
6 budget for the current fiscal year, a proposed budget for the
7 next fiscal year, a list of the present employee positions
8 and the salaries paid for each position and a list of all
9 contracts entered into during the past fiscal year and the
10 current fiscal year to date and the amount expended to date
11 under each contract. The legislative finance committee shall
12 forward any report submitted to any interim or standing
13 legislative committees as deemed appropriate. Upon request
14 of the appropriate committee, the board or the board of
15 directors of any corporation formed by the research
16 applications center shall appear before any interim or
17 standing legislative committee to provide an accounting of
18 all activities.

19 Section 8. CONFLICTS OF INTEREST.--

20 A. If any director, officer or employee of the
21 research applications center is interested directly or
22 indirectly or is an officer or employee of or has any
23 ownership interest in a legal entity interested directly or
24 indirectly in a contract or potential contract with the
25 research applications center, except for any agency,

1 instrumentality, institution or political subdivision of the
2 state, the interest shall be disclosed to the board and shall
3 be set forth in the minutes of the board. The director,
4 officer or employee having the interest shall not participate
5 on behalf of the research applications center in the
6 authorization of the contract.

7 B. Any director, officer or employee of the
8 research applications center shall enter into a nondisclosure
9 agreement that at a minimum provides:

10 (1) a clear description of confidential
11 information that the research applications center may
12 disclose to the director, officer or employee;

13 (2) a clear description of the limitations
14 on the use of confidential information by the director,
15 officer or employee;

16 (3) a confidentiality period that requires
17 the director, officer or employee to hold confidential
18 information in confidence until that information becomes
19 generally publicly known;

20 (4) that the director, officer or employee
21 shall be prohibited from acquiring an intellectual property
22 right;

23 (5) for the return of all confidential
24 information to the research applications center upon request;

25 (6) remedies for unauthorized disclosure of

1 confidential information under the nondisclosure agreement,
2 which may provide for liquidated damages, specific
3 performance or injunction against further disclosure or
4 breach, in addition to all other remedies available at law or
5 equity to the research applications center for unauthorized
6 disclosure of confidential information by the director,
7 officer or employee; and

8 (7) for the award of reasonable attorney
9 fees and costs incurred by the research applications center
10 in seeking enforcement of the nondisclosure agreement.

11 C. Nothing in this section shall prohibit an
12 officer, director or employee of a financial institution from
13 participating as a member of the board in setting general
14 policies of the research applications center, nor shall any
15 provision of this section be construed as prohibiting a
16 financial institution of New Mexico from making loans
17 guaranteed pursuant to the provisions of the New Mexico
18 Research Applications Act because an officer, director or
19 employee of the financial institution serves as a member of
20 the board.

21 Section 9. CONTRACTS INVOLVING PUBLIC EMPLOYEES.--

22 Except as provided in Section 10 of the New Mexico Research
23 Applications Act, the research applications center shall not
24 enter into any contract involving services or property of a
25 value in excess of twenty thousand dollars (\$20,000) with an

1 employee of the state or one of its agencies,
2 instrumentalities, institutions or political subdivisions or
3 with a business in which the employee has a controlling
4 interest unless the board makes a determination, in writing,
5 that the employee:

6 A. is employed by a university;

7 B. is principally involved in research, public
8 service, economic development or instruction; and

9 C. is able to provide services that are not
10 readily available from another person or is able to provide
11 services that are less expensive or of higher quality than
12 are otherwise available.

13 Section 10. TRANSFER OF TECHNOLOGY--OWNERSHIP OF
14 INTELLECTUAL PROPERTY.--

15 A. Notwithstanding the provisions of Section 9 of
16 the New Mexico Research Applications Act, Section 10-16-7,
17 13-1-190, 21-1-17 or 21-1-35 NMSA 1978 or of any other
18 statute, ordinance or policy regulating the conduct of public
19 employees, an officer or employee of a university who is
20 principally involved in research, public service, economic
21 development or instruction may, subject to Subsection B of
22 this section, apply to the secretary of economic development
23 for permission to establish and maintain a substantial
24 interest in a private entity that provides or receives
25 equipment, material, supplies or services in connection with

1 the research applications center in order to facilitate the
2 transfer of technology developed by the officer or employee
3 from the research applications center to commercial and
4 industrial enterprises for economic development.

5 B. The secretary of economic development may grant
6 the permission only if all of the following conditions are
7 met:

8 (1) the employer of the officer or employee
9 certifies to the secretary that the employer does not object
10 to the proposed relationship;

11 (2) the officer or employee provides a
12 detailed description of the officer's or employee's interest
13 in the private entity;

14 (3) the nature of the proposed undertaking
15 is fully described;

16 (4) the officer or employee demonstrates, to
17 the satisfaction of the secretary, that the proposed
18 undertaking may benefit the economy of this state;

19 (5) the officer or employee demonstrates to
20 the satisfaction of the secretary that the proposed
21 undertaking will not adversely affect research, public
22 service or instructional activities at any educational
23 institution; and

24 (6) the officer's or employee's interest in
25 the private entity or benefit from the interest will not

1 adversely affect any substantial state interest.

2 C. An officer or employee of a university who is
3 principally involved in research, public service, economic
4 development or instruction may develop, create or
5 commercialize new intellectual property for the state and
6 encourage new opportunities for business and increased jobs.
7 Intellectual property created by an employee or agent of a
8 university associated with the research applications center
9 shall be owned by the university. Intellectual property
10 created jointly shall be owned jointly. If the intellectual
11 property is created using federal funds, the applicable
12 federal laws and regulations shall govern the ownership.

13 D. The board may establish policies for the
14 implementation of this section.

15 Section 11. Section 10-16-7 NMSA 1978 (being Laws 1967,
16 Chapter 306, Section 7, as amended) is amended to read:

17 "10-16-7. CONTRACTS INVOLVING PUBLIC OFFICERS OR
18 EMPLOYEES.--A state agency shall not enter into a contract
19 for services, construction or items of tangible personal
20 property with a public officer or employee of the state, with
21 the family of the public officer or employee or with a
22 business in which the public officer or employee or the
23 family of the public officer or employee has a substantial
24 interest unless the public officer or employee has disclosed
25 the public officer's or employee's substantial interest and

1 unless the contract is awarded pursuant to the Procurement
2 Code, except that the potential contractor shall not be
3 eligible for a sole source or small purchase contract;
4 provided that this section does not apply to a contract of
5 official employment with the state or to contracts made
6 pursuant to the provisions of the University Research Park
7 and Economic Development Act or the New Mexico Research
8 Applications Act. A person negotiating or executing a
9 contract on behalf of a state agency shall exercise due
10 diligence to ensure compliance with the provisions of this
11 section."

12 Section 12. Section 13-1-190 NMSA 1978 (being Laws
13 1984, Chapter 65, Section 163, as amended) is amended to
14 read:

15 "13-1-190. UNLAWFUL EMPLOYEE PARTICIPATION
16 PROHIBITED.--

17 A. Except as permitted by the University Research
18 Park and Economic Development Act or the New Mexico Research
19 Applications Act, it is unlawful for any state agency or
20 local public body employee, as defined in the Procurement
21 Code, to participate directly or indirectly in a procurement
22 when the employee knows that the employee or any member of
23 the employee's immediate family has a financial interest in
24 the business seeking or obtaining a contract.

25 B. An employee or any member of an employee's

1 immediate family who holds a financial interest in a
2 disclosed blind trust shall not be deemed to have a financial
3 interest with regard to matters pertaining to that trust."

4 Section 13. Section 21-1-17 NMSA 1978 (being Laws 1889,
5 Chapter 138, Section 68, as amended) is amended to read:

6 "21-1-17. INTEREST IN CONTRACTS BY BOARD MEMBERS OR
7 EMPLOYEES PROHIBITED.--No employee or member of a board of
8 regents of a state educational institution shall have direct
9 or indirect financial interest in any contract for building
10 or improving any of that state educational institution or for
11 the furnishing of supplies or services to that institution
12 except as permitted pursuant to the University Research Park
13 and Economic Development Act or the New Mexico Research
14 Applications Act, or unless it complies with provisions of
15 the Governmental Conduct Act and the Procurement Code."

16 Section 14. TEMPORARY PROVISION--TRANSFER.--On the
17 effective date of this act, all personnel, appropriations,
18 money, records, property, equipment and supplies of the
19 technology research collaborative shall be transferred to the
20 economic development department for the use of the research
21 applications center and all existing contracts, agreements
22 and obligations in effect for the technology research
23 collaborative shall be binding and effective on the economic
24 development department.

25 Section 15. REPEAL.--Section 21-11-8.5 NMSA 1978 (being

1 Laws 2005, Chapter 81, Section 1) is repealed.

2 Section 16. EMERGENCY.--It is necessary for the public
3 peace, health and safety that this act take effect
4 immediately. _____

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