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FISCAL IMPACT REPORT

SPONSOR	Fischmann	ORIGINAL DATE	02/03/09	HB
		LAST UPDATED	03/21/09	
SHORT TITLE	New Mexico Research Applications Act	SB	205/aSCORC/aSFC/ aSFI#1/aSFI#2/aHBIC	
		ANALYST	Lucero	

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Indeterminate but expected to be moderately substantial	Indeterminate but expected to be moderately substantial	Indeterminate but expected to moderately substantial	Recurring	General Fund

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Education Department (PED)
 Higher Education Department (HED)
 Economic Development Department (EDD)
 Workforce Solutions Department (WSD)

SUMMARY

Synopsis of HBIC Amendment

House Business and Industry Committee (HBIC) amendment to Senate Bill 205, as amended, primarily changes the composition of the board to 12 members including:

1. the secretary of Economic Development;
2. the secretary of Higher Education;
3. the secretary of Workforce Solutions;
4. the chair of the New Mexico Council of University Presidents;
5. the governor's Science Advisor;
6. a member appointed by the governor from one of the National Laboratories; and
7. six members appointed by the Legislature;
 - a) one who shall represent the business community;
 - b) one who shall represent local governments;
 - c) one who shall be a President of a Post-Secondary Public Education Institution;
 - d) one who shall have expertise in rural economic development;
 - e) one who shall have expertise in venture capital;
 - f) one who shall have expertise in health care

The amendment also specifies that the governor with the advice and consent of the Senate shall appoint one of the members as chair of the board.

Synopsis of SFI Amendment #2

Senate Floor Amendment #2 to the Senate Finance Committee (SFC) amended Senate Bill 205 restores the penalty for violating Section 14 at the level established in the SCORC amendment.

The amendment also adds a new subsection to require any director, officer, or employee of the RAC to enter into a nondisclosure agreement and identifies remedies for an unauthorized disclosure of confidential information.

Synopsis of SFI Amendment #1

Senate Floor Amendment #1 to the Senate Finance Committee (SFC) amended Senate Bill 205 removes the exemption of the RAC from following the procurement code for the purchase of goods and services. However, the amendment clarifies that the RAC shall be deemed a local public body for the purposes of the Procurement Code, except that the board may exempt a specific procurement from the application of the Procurement Code if it make a finding that compliance would impede the purposes of the Act.

Synopsis of SFC Amendment

Senate Finance Committee (SFC) amendment to Senate Bill 205:

1. Removes SCORC amendment regarding ownership of intellectual property and increased fines, and replaces it with a new amendment;
2. Adds language to clarify that the Secretary of Economic Development would be a non-voting member to the board of directors;
3. Adds one additional member of the Legislature (for a total of seven) to the board of directors;
4. Clarifies that the additional Legislative member would be appointed by the Legislative Finance Committee (LFC);
5. Specifies that the annual report to the LFC shall including an operating budget, a proposed budget for the next fiscal year, a list of employee positions, salaries, and contracts;
6. Increases the penalty to a fourth degree felony and \$25,000 or imprisonment for a definite term not to exceed eighteen months or both for a violation of the Act.
7. Changes the oversight for certain expenditures from the governor or governor's designee to the board;
8. adds a new subsection regarding ownership of intellectual property to clarify that
 - officers or employees of a university may develop, create or commercialize intellectual property for the state and encourage new opportunities for business and jobs;
 - intellectual property created by an employee or agent of a university associated with the research application center shall be owned by the university;
 - intellectual property created jointly shall be owned jointly;
 - intellectual property created that used federal funds, shall follow applicable federal laws and regulations
9. Deletes Section 14 of the bill in its entirety.

Synopsis of SCORC Amendment

Senate Corporations and Transportation Committee (SCORC) amendment to Senate Bill 205:

1. clarifies that members of the board of directors includes “representation of the research institutions of this state”;
2. replaces the “governor’s science advisor” with “secretary of economic development” on the board of directors;
3. adds a new subsection regarding ownership of intellectual property to clarify that
 - intellectual property created by an employee or agent of a university associated with the research application center shall be owned by the university;
 - intellectual property created jointly shall be owned jointly;
 - intellectual property created that used federal funds, shall follow applicable federal laws and regulations
4. changes the fine for violating provisions of the Act from \$1,000 to \$25,000.

Synopsis of Original Bill

Senate Bill 205 proposes to enact the New Mexico Research Applications Act, the purpose of which is to promote public welfare and prosperity; foster intellectual property economic development; attract technological investment; create jobs; support educational initiatives in science, technology, engineering, and math; forge links among the business community, universities, foundations, national laboratories, and government; and engage in cooperative ventures.

The Act provides for a geographically, culturally, and ethnically diverse board of directors composed of 13 members including the governor’s science advisor (chair), six members appointed by the governor divided among the congressional districts, six members appointed by the legislature each serving four year terms. The board shall hire a president who will be the chief administrative officer of the research applications center (RAC).

The Act also provides for a nonprofit corporation created pursuant to the Nonprofit Corporation Act and identifies the applicability of others laws to the RAC, as follows:

- Except as otherwise provided in the Act, the RAC shall not be subject to state laws relating to personnel, meetings of the Board, gross receipts taxes, dealing with property transfers;
- The RAC will be deemed an agency of the state when applying laws relating to furnishing goods and services to the state or any other agency, political subdivision or institution of the state; and
- The RAC will be considered a governmental entity for purposes of the Tort Claims Act, provided the RAC may enter into agreements with insurance carriers to mitigate risk.

The bill limits contracts with public employees to \$20 thousand unless the governor or designee makes a written determination that the services are of higher quality or less expensive than otherwise available.

Additionally, the Act establishes how the transfer of technology developed by an officer or employee from the RAC to commercial and industrial enterprises for economic development, including establishing and maintaining a substantial interest in a private entity that provides or receives equipment, material, supplies or services in connection with the RAC – will be subject to the approval of the Secretary of EDD under certain conditions.

In addition, SB205 repeals Section 21-11-8.5 NMSA, Technology Research Collaborative (TRC) and transfers its property, contracts, agreements, and obligations to the New Mexico Economic Development Department (EDD) for the use of the research applications center.

The bill declares an emergency.

FISCAL IMPLICATIONS

The SFL Amendment #2 reduces the penalty for violating Section 14 of the Act to the level established in the SCORC amendment - \$25,000.

The SFC amendment adds that the penalty for violating provisions of Section 14 of the Act is a fourth degree felony and punishable by fine up to \$25,000 or imprisonment for 18 months or both.

The SCORC amendment increases the fine for violating provisions of the Act from \$1,000 to \$25,000. It is unclear the disposition of the fine once paid. There is no fund authorized for the RAC.

A fiscal impact is not immediately identifiable; the Act intends to provide an umbrella mechanism for the New Mexico Computing Applications Center (NMCAC) or “supercomputer”, Energy Innovation, Water Innovation, and Green Grid initiatives. Most likely, the EDD will incur some expense with regard to the creation of the non-profit corporation; however, the amount is unknown. The non-profit corporation created in this bill is much like that of the Economic Development Partnership.

The bill does not specifically provide an appropriation, or provide a provision to collect fees or generate revenue, or create a fund to support the nonprofit corporation. The bill provides for a fine of \$1,000 for violations of provisions of the Act. It is likely that the RAC will need an operating budget; however, the source of revenue during the start-up years is not identified.

Information regarding expenditures and revenue related to the corporation may difficult to obtain because the Act exempts the corporation from several provisions relating to state agencies.

The bill addresses ownership of intellectual property; however, the bill does not specify how revenues will be shared. State supported schools should revert revenue to the general fund derived from intellectual property, or a portion there of, for appropriation by the Legislature. In many cases, although the school receives state support to operate the school, the general fund does not share in revenues derived from intellectual property.

The business plan for the supercomputer initiative includes state support over the next six years until sustainability is projected after FY13. However, the plan was not submitted as part of the analysis related to the NMCAC for this FIR.

SIGNIFICANT ISSUES

The SFC amendment requires the RAC to report expenditure and budget information to the LFC annually, resolving the technical issue regarding information.

SB205 creates a new non-profit corporation to carry out activities related to economic development. The Act exempts the RAC from laws relating to personnel, procurement of goods and services, meetings of the board, gross receipts taxes, dealing with property transfers. The exemption may make future requests for information difficult and transactions of the non-profit less transparent to the Legislature and the general public.

However, the Act specifies that the RAC will be deemed an agency of the state when applying laws relating to furnishing goods and services to the state or any other agency, political subdivision or institution of the state; and a governmental entity for purposes of the Tort Claims Act, provided the RAC may enter into agreements with insurance carriers to mitigate risk.

This bill provides the mechanism to provide oversight to the NMCAC Initiative. NMCAC received \$14 million in Laws of 2007, Chapter 42 to plan design and purchase equipment related to the “supercomputer”. NMCAC is applying the power of supercomputing to drive high-tech business and sustainable high-wage job growth in New Mexico. NMCAC will also address important state needs in energy, environment, water, and health.

The NMCAC identifies the following major core components:

- Educational outreach, particularly in science, technology, engineering, and mathematics (STEM);
- Workforce development in high technology;
- Public policy and planning using visualization, modeling and simulation;
- Federal, university, private foundation, and national labs research applications; and
- A unique focus on partnering with business and industry to provide computing expertise and time on the supercomputer for commercial applications.

The Public Education Department (PED) reports that while the “gateways” through which the supercomputer can be accessed will be located on campuses of postsecondary institutions, the NMCAC has a K-12 outreach component. The focus of the K-12 outreach is on visualization technologies and simulation activities that require supercomputing capabilities.

Additionally, EDD provides:

The RAC would also coordinate the Energy and Water Innovation fund activities. Both funds are dependent upon reliable technology vetting and prudent but rapid decision-making - all of which would be available under the model outlined above.

The RAC would also coordinate the New Mexico Green Grid initiative, a project which will help move the State along a predictable path towards energy independence and reduce its CO2 emissions through conversion to renewable energy power generation. It is both the typical and ideal project to be administered under the direction of the proposed center as it requires intense cooperation at the State and Federal level that goes beyond the scope and

ability of one government department alone to adequately handle. A true public-private sector partnership that combines the efforts of the State, Federal labs, and the business community, the GGI will require significant project management and the kind of intercession and interaction with officials at all levels that demands a focused approach. Success of this initiative would provide the State with solutions to energy problems and open up opportunities for revenue generation once the final Grid project is complete.

PERFORMANCE IMPLICATIONS

EDD notes that the Act is compatible with the department's overarching goals of attracting new investment and stimulating the existing business community to generate new business start-ups by targeting specific initiatives that promise significant return on investment to the State.

This bill supports the PED's efforts to fully implement the standards and benchmarks in science and mathematics. It also supports Strategy 1.1 of the *Strategic Action Plan for Advancing Math and Science Education in New Mexico*, specifically "Implement math and science curricula...which engage students by capitalizing on today's exciting frontiers in math and science." Furthermore, it supports the recommendations in *NM Project 2012* related to connecting members of the New Mexico professional science, technology, engineering and mathematics (STEM) community with K-20 math and science student learning as well as making use of high bandwidth visualization techniques and strengthening collaborations between the PED Math and Science Bureau and the NMCAC.

ADMINISTRATIVE IMPLICATIONS

The Economic Development Department (EDD) would establish the nonprofit corporation. As stated above, the RAC would function similarly to the Economic Development Corporation. The Economic Development Corporation created a non-profit, the New Mexico Partnership. The New Mexico Partnership receives funds from EDD for operational expenses. This bill does not provide an appropriation to EDD for operational expenses for the RAC.

Since PED staff is already committed to consulting on the NMCAC, providing input to the RAC is not seen as an expansion of current efforts.

The Act provides that the board shall contract annually with an independent certified public accountant approved by the state auditor, to perform an examination and audit of the accounts and books of the Research Applications Center. It is uncertain who or how the expenses of the non-profit will be paid.

RELATIONSHIP

Relates to General Appropriation Act and requests for capital outlay appropriations.

TECHNICAL ISSUES

The Secretary of Public Education is on the Board of the NMCAC and PED staff is on its K-12 education subcommittee

There may be technical issues associated with exempting the non-profit from certain laws which typically govern other state agencies and/or establishing quasi-state governmental entities.

OTHER SUBSTANTIVE ISSUES

The Act provides that an annual report of the activities during the previous fiscal year of the RAC shall be provided by the board to the Legislative Finance Committee (LFC) at least 90 in advance of each regular legislative session. The LFC shall forward any report submitted to any interim or standing legislative committees as deemed appropriate. Upon request of the appropriate committee, the board or the board of directors of any corporation formed by the RAC shall appear before any interim or standing legislative committee to provide an accounting of all activities.

Appropriations for the “supercomputer” at the Computer Application Center totaled approximately \$14 million in the 2007 legislative session. The “supercomputer” is the third fastest computer in the world and was brought “on-line” January 12, 2008 at a cost of \$11 million. In the 2008 legislative session, the initiative received capital outlay of \$1.8 million for additional equipment to fund “gateways” (remote access points through the State) and a \$2.8 million special appropriation to the Department of Information Technology for the first year of operating expenses. The business plan for the supercomputer initiative includes state support over the next six years until sustainability is projected after FY13. The NMCAC has a business plan with external (non-state) support exceeding \$3M; however, the plan was not submitted or reviewed as part of the data related to this FIR.

SB205 is related to FY10 requests for \$4.25M in operational expenses and \$2.6M of capital outlay to fund "gateways" at community colleges and branch campuses of state universities for the NMCAC. SB205 is also related to a \$2 million capital request to start the New Mexico Green Grid initiative (GGI). It is also related to a capital request for Energy Innovation.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

PED reports that failure to pass this bill would mean that the state would not have any mechanism to coordinate and optimize state-supported activities related to K-12 education access to technology-related initiatives such as the NM Computing Applications Center.

EDD notes that failure to pass this bill would mean that the State would not have any mechanism to implement, oversee, or support the recommendations of the State Science and Technology Roadmap. The primary goal of that roadmap is to increase the number of high-paying, high-tech, sustainable jobs in New Mexico. The roadmap includes the Energy Innovation, Water Innovation, Computing Applications Center, and Green Grid initiatives.

AMENDMENTS

The bill should authorize a non-reverting fund to deposit revenue from gifts, grants, donations, and enterprise revenue.

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