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HOUSE BILL 128

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

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 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; AMENDING, REPEALING AND ENACTING SECTIONS 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 NEW
2 MEXICO BUSINESS 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. One-fourth percent of the market value of the
7 severance tax permanent fund shall be invested in New Mexico
8 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 and within guidelines and policies established by the council.

19 D. As used in this section:

20 (1) "New Mexico business" means, in the case
21 of a corporation or limited liability company, a business with
22 its principal office and a majority of its full-time employees
23 located in New Mexico or, in the case of a limited partnership,
24 a business with its principal place of business and eighty
25 percent of its assets located in New Mexico; and

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1 (2) "New Mexico private equity fund" means an
2 entity that makes, manages or sources potential investments in
3 New Mexico businesses and that:

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

9 (b) holds out the prospects for capital
10 appreciation from such investments;

11 (c) has at least one full-time manager
12 with at least three years of professional experience in
13 assessing the growth prospects of businesses or evaluating
14 business plans;

15 (d) is committed to investing or helps
16 secure investing by others, in an amount at least equal to the
17 total investment made by the state investment officer in that
18 fund pursuant to this section, in businesses with a principal
19 place of business in New Mexico and that hold promise for
20 attracting additional capital from individual or institutional
21 investors nationwide for businesses in New Mexico; and

22 (e) accepts investments only from
23 accredited investors as that term is defined in Section 2 of
24 the federal Securities Act of 1933, as amended (15 USCA Section
25 77(b)), and rules and regulations promulgated pursuant to that

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1 section, or federally recognized Indian tribes, nations and
2 pueblos with at least five million dollars (\$5,000,000) in
3 overall investment assets.

4 E. The state investment officer is authorized to
5 make investments in New Mexico businesses to create new job
6 opportunities and to support new, emerging or expanding
7 businesses in a manner consistent with the constitution of New
8 Mexico if:

9 (1) the investments are made:

10 (a) in conjunction with cooperative
11 investment agreements with parties that have demonstrated
12 abilities and relationships in making investments in new,
13 emerging or expanding businesses;

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

21 (c) in a New Mexico business that is
22 approved by the technology research collaborative and that: 1)
23 is established to perform technology transfer, research and
24 development, research commercialization, manufacturing,
25 training, marketing or public relations in any field of science

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1 or technology, including but not limited to energy, security,
2 defense, aerospace, automotives, electronics,
3 telecommunications, computer and information science,
4 environmental science, biomedical science, life science,
5 physical science, materials science or nanoscience, using
6 research developed in whole or in part by a state institution
7 of higher education or a prime contractor designated as a
8 national laboratory by an act of congress that is operating a
9 facility in the state, or an affiliated entity; and 2) has [~~an~~
10 ~~agreement~~] agreed to operate the business [~~on state lands~~]
11 within the state of New Mexico;

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

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

21 (a) is due to foreclosure or other
22 action by the state investment officer pursuant to agreements
23 with the business or other investors in that business;

24 (b) is necessary to protect the
25 investment; and

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

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

21 G. The state investment officer shall report
22 semiannually on the investments made pursuant to this section.
23 Annually, a report shall be submitted to the legislature prior
24 to the beginning of each regular legislative session and a
25 second report no later than October 1 each year to the

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1 legislative finance committee, the revenue stabilization and
2 tax policy committee and any other appropriate interim
3 committee. Each report shall provide the amounts invested in
4 each New Mexico private equity fund, as well as information
5 about the objectives of the funds, the companies in which each
6 private equity fund is invested and how each private equity
7 investment enhances the economic development objectives of the
8 state. Each report also shall provide the amounts invested in
9 each New Mexico business and the returns on those investments."

10 SECTION 2. [NEW MATERIAL] TECHNOLOGY RESEARCH

11 COLLABORATIVE CREATED--PURPOSE.--

12 A. The "technology research collaborative" is
13 created. The economic development department shall be the
14 fiscal agent for the collaborative.

15 B. Participating institutions associated with the
16 collaborative shall include national laboratories, other major
17 research institutes and all of the post-secondary educational
18 institutions in New Mexico.

19 C. The purpose of the collaborative is to:

20 (1) establish advanced technology centers
21 based on the wealth of scientific and technical talent that
22 exists in the participating institutions;

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

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1 (3) commercialize the intellectual property
2 that is created; and

3 (4) help create a workforce to support
4 enterprises based on the intellectual property that is created.

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

12 E. The collaborative may receive appropriations
13 from the legislature through the economic development
14 department and may receive any other items of value from public
15 or private sources.

16 F. The "board of the technology research
17 collaborative" is created. The board shall consist of eleven
18 members as follows:

19 (1) the presidents, or their designees, of the
20 university of New Mexico, New Mexico state university and New
21 Mexico institute of mining and technology;

22 (2) five members at large, appointed by the
23 governor, with the consent of the senate, who include persons
24 who have expertise in law, investment banking, venture capital,
25 entrepreneurship or technology businesses;

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1 (3) the director of Sandia national
2 laboratories or the director's designee;

3 (4) the director of Los Alamos national
4 laboratory or the director's designee; and

5 (5) the secretary of economic development, who
6 may vote only in order to break a tie vote.

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

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

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

22 J. The board shall:

23 (1) employ a director and other staff, who
24 shall be exempt from the provisions of the Personnel Act, as
25 the board deems necessary to provide continuity and management

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1 of the collaborative;

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

7 (3) review and approve or disapprove equity
8 investments in New Mexico businesses by the state investment
9 council pursuant to Section 7-27-5.15 NMSA 1978; except that no
10 member of the board may participate in or influence an
11 investment decision in which that member has a conflict of
12 interest, pecuniary interest or other disqualifying interest
13 respecting an enterprise considered by the board. All members
14 shall certify annually and in writing compliance with this
15 provision.

16 SECTION 3. REPEAL.--Section 21-11-8.6 NMSA 1978 (being
17 Laws 2013, Chapter 130, Section 1) is repealed.