

HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR
HOUSE BILL 128

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

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; AMENDING A SECTION OF THE SEVERANCE TAX BONDING ACT TO REQUIRE THE STATE INVESTMENT COUNCIL TO INVEST BETWEEN ONE-TENTH AND ONE-FOURTH PERCENT OF THE MARKET VALUE OF THE SEVERANCE TAX PERMANENT FUND IN NEW MEXICO BUSINESSES THAT ARE RECOMMENDED 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. Included in this nine percent between fiscal year
7 2018 and fiscal year 2025, between one-tenth and one-fourth
8 percent of the market value of the severance tax permanent fund
9 shall be invested in New Mexico business enterprises that are
10 recommended by the technology research collaborative.

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

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

20 D. As used in this section:

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

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1 percent of its assets located in New Mexico; and

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

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

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

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

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

23 (e) accepts investments only from
24 accredited investors as that term is defined in Section 2 of
25 the federal Securities Act of 1933, as amended (15 USCA Section

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1 77(b)), and rules and regulations promulgated pursuant to that
2 section, or federally recognized Indian tribes, nations and
3 pueblos with at least five million dollars (\$5,000,000) in
4 overall investment assets.

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

10 (1) the investments are made:

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

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

22 (c) in a New Mexico business that is
23 recommended by the technology research collaborative and that:

24 1) is established to perform technology transfer, research and
25 development, research commercialization, manufacturing,

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

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

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

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

25 (b) is necessary to protect the

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1 investment; and

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

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

22 G. The state investment officer shall report
23 semiannually on the investments made pursuant to this section.
24 Annually, a report shall be submitted to the legislature prior
25 to the beginning of each regular legislative session and a

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1 second report no later than October 1 each year to the
 2 legislative finance committee, the revenue stabilization and
 3 tax policy committee and any other appropriate interim
 4 committee. Each report shall provide the amounts invested in
 5 each New Mexico private equity fund, as well as information
 6 about the objectives of the funds, the companies in which each
 7 private equity fund is invested and how each private equity
 8 investment enhances the economic development objectives of the
 9 state. Each report also shall provide the amounts invested in
 10 each New Mexico business and the aggregate returns on those
 11 investments together with the net returns from investments that
 12 were liquidated during the reporting period."

13 SECTION 2. [NEW MATERIAL] TECHNOLOGY RESEARCH

14 COLLABORATIVE CREATED--PURPOSE.--

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

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

22 C. The purpose of the collaborative is to:

23 (1) establish advanced technology centers
 24 based on the wealth of scientific and technical talent that
 25 exists in the participating institutions;

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

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

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

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

15 E. The collaborative may receive appropriations
16 from the legislature through the economic development
17 department.

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

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

24 (2) four members at large, appointed by the
25 New Mexico legislative council, who include persons who have

1 expertise in law, investment banking, technology
2 commercialization, venture capital, entrepreneurship or
3 technology businesses;

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

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

8 G. All appointed members shall serve for two-year
9 terms at the pleasure of the New Mexico legislative council.
10 Members shall serve until their successors have been appointed.

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

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

21 J. The board shall:

22 (1) be staffed by the economic development
23 department, which shall provide continuity and management of
24 the collaborative;

25 (2) prepare annual reports to the legislature

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1 on the expenditures and progress of the collaborative and
2 performance results of investments approved by the
3 collaborative made by the state investment council pursuant to
4 Section 7-27-5.15 NMSA 1978; and

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

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

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