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SENATE BILL 26

**52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

INTRODUCED BY

Michael Padilla

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; REPEALING A SECTION 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:

"7-27-5.15. NEW MEXICO PRIVATE EQUITY FUNDS AND BUSINESS

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1 INVESTMENTS.--

2 A. No more than nine percent of the market value of  
3 the severance tax permanent fund may be invested in New Mexico  
4 private equity funds or New Mexico businesses under this  
5 section. One-fourth percent of the market value of the  
6 severance tax permanent fund shall be invested in New Mexico  
7 business enterprises that are approved by the technology  
8 research collaborative.

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

14 C. The state investment officer shall make  
15 investments in New Mexico private equity funds pursuant to  
16 Subsection A of this section only upon approval of the council,  
17 upon review of the recommendation of the private equity  
18 investment advisory committee and within guidelines and  
19 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 a  
3 limited partnership, limited liability company or corporation  
4 organized and operating in the United States and maintaining an  
5 office staffed by a full-time investment officer in New Mexico  
6 that:

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

12 (b) holds out the prospects for capital  
13 appreciation from such investments;

14 (c) has at least one full-time manager  
15 with at least three years of professional experience in  
16 assessing the growth prospects of businesses or evaluating  
17 business plans and who has established permanent residency in  
18 the state;

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

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1 (e) accepts investments only from  
2 accredited investors as that term is defined in Section 2 of  
3 the federal Securities Act of 1933, as amended (15 USCA Section  
4 77(b)), and rules and regulations promulgated pursuant to that  
5 section, or federally recognized Indian tribes, nations and  
6 pueblos with at least five million dollars (\$5,000,000) in  
7 overall investment assets.

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

13 (1) the investments are made:

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

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

25 (c) in a New Mexico business that is

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

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

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

25 (a) is due to foreclosure or other

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1 action by the state investment officer pursuant to agreements  
2 with the business or other investors in that business;

3 (b) is necessary to protect the  
4 investment; and

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

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

25 G. The state investment officer shall report

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1 semiannually on the New Mexico private equity investments made  
2 pursuant to this section. Annually, a report shall be  
3 submitted to the legislature prior to the beginning of each  
4 regular legislative session and a second report no later than  
5 October 1 each year to the legislative finance committee, the  
6 revenue stabilization and tax policy committee and any other  
7 appropriate interim committee. Each report shall provide the  
8 amounts invested in each New Mexico private equity fund, as  
9 well as information about the objectives of the funds, the  
10 companies in which each fund is invested and how each  
11 investment enhances the economic development objectives of  
12 the state. Each report shall provide the amounts invested in  
13 each New Mexico business and the returns on those investments."

14 SECTION 2. [NEW MATERIAL] TECHNOLOGY RESEARCH

15 COLLABORATIVE CREATED--PURPOSE.--

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

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

23 C. The purpose of the collaborative is to:

24 (1) establish advanced technology centers  
25 based on the wealth of scientific and technical talent that

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1 exists in the participating institutions;

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

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

7 (4) help create a work force to support  
8 enterprises based on the intellectual property that is created.

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

16 E. The collaborative may receive appropriations  
17 from the legislature through the economic development  
18 department and may receive any other items of value from public  
19 or private sources.

20 F. The "board of the technology research  
21 collaborative" is created. The board shall consist of eleven  
22 members as follows:

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

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

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

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

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

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

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

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

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J. The board shall:

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

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

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

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