

ARTICLE 7B

New Mexico Research Applications

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53-7B-1. Short title.

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

53-7B-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;
- E. forge links, critical partnerships and collaboration among New Mexico's business communities, universities, private foundations, national laboratories and government through the development of a research applications center;
- F. support educational initiatives in science, technology, engineering and mathematics in the state to ensure the availability of the future work force required to meet the goals of the New Mexico Research Applications Act; and
- G. engage in cooperative ventures related to the use of research and development applications, including the use of research and development applications as a means of enhancing state and local resource development and promoting innovative technological advances in the areas of economic, community and work force development; education; science; technology; engineering; mathematics; research and development; conservation; and health care, within New Mexico.

53-7B-3. Definitions.

As used in the New Mexico Research Applications Act:

- A. "board" means the board of directors of the research applications center;
- B. "department" means the economic development department;
- C. "research applications center" means the nonprofit corporation created pursuant to the Nonprofit Corporation Act [53-8-1 NMSA 1978] and the New Mexico Research Applications Act;
- D. "technological innovations" includes research, development, prototype assembly, manufacturing, patenting, licensing, marketing and sale of inventions, ideas, practices, applications, processes, machines and technology and related property rights of all kinds; and
- E. "university" means:
 - (1) a New Mexico educational institution named in Article 12, Section 11 of the constitution of New Mexico;

- (2) a community college organized pursuant to the Community College Act [21-13-1 NMSA 1978]; or
- (3) a technical and vocational institute organized pursuant to the Technical and Vocational Institute Act [21-16-1 NMSA 1978].

53-7B-4. Research applications center; formation; board of directors; public access to meetings and minutes.

A. The department shall, pursuant to the Nonprofit Corporation Act [53-8-1 NMSA 1978] and internal revenue service regulations pertaining to nonprofit corporations, incorporate a corporation with the name "New Mexico research applications center"; provided that, if that name is not available, the department shall select another name that reflects the purposes of the New Mexico Research Applications Act.

B. The articles of incorporation shall include:

- (1) provisions for appointing the board pursuant to Subsection C of this section;
- (2) provisions requiring that board vacancies shall be filled by the appropriate appointing authority;
- (3) a statement that board members, subject to the availability of funds, shall receive per diem and mileage at the rate provided in the Per Diem and Mileage Act [10-8-1 NMSA 1978] for nonsalaried public officers and shall receive no other compensation, perquisite or allowance;
- (4) a statement that the corporation will have no members;
- (5) provisions that prohibit any board action inconsistent with the New Mexico Research Applications Act;
- (6) provisions that prohibit the board from increasing the number of directors;
- (7) a plan of distribution of the assets remaining after dissolution or final liquidation of the corporation. The plan shall require that, after all liabilities and obligations are paid, all funds of the corporation shall be deposited in the general fund and all other assets shall be distributed to the department of finance and administration; and
- (8) any other provisions deemed necessary by the department to ensure compliance with the New Mexico Research Applications Act.

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

- (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, who shall be a director of a national laboratory located in New Mexico; and
- (7) six members shall be appointed by the legislature as follows:
 - (a) one member appointed by the speaker of the house of representatives, who shall represent the business community;
 - (b) one member appointed by the majority leader of the house of representatives, who shall represent local governments;
 - (c) one member appointed by the minority leader of the house of representatives, who shall be a president of a New Mexico post-secondary public educational institution;
 - (d) one member appointed by the president pro tempore of the senate, who shall have expertise in rural economic development;
 - (e) one member appointed by the majority leader of the senate, who shall have expertise in venture capital; and

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

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

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

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

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

53-7B-5. Research applications center; powers.

As directed by the board, the research applications center may:

A. acquire, by lease or purchase, the land, buildings, facilities, improvements and equipment necessary to achieve the purposes of the New Mexico Research Applications Act;

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

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

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

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

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

(3) the research applications center shall not incur any debt greater than one million dollars (\$1,000,000) or for a term longer than eight months without the prior approval of the state board of finance;

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

F. otherwise conduct, sponsor, finance and contract as necessary to further technological innovations;

G. purchase, take, receive or otherwise acquire; own; hold; dispose of; use; or otherwise deal in and with property, including an interest in or ownership of intangible personal property, intellectual property or technological innovations;

H. sell, convey, pledge, exchange, transfer or otherwise dispose of its assets and properties for consideration upon terms and conditions that the board shall determine;

- I. solicit, receive and administer grants, contracts and gifts from federal, state and private sources;
- J. invest and reinvest its funds;
- K. employ officers and employees that it deems necessary, set their compensation and prescribe their duties;
- L. enter into agreements with insurance carriers to insure against any loss in connection with its operations;
- M. authorize retirement programs and other benefits for salaried officers and employees;
- N. create such enterprise funds, revolving funds or other financial arrangements as it deems necessary to carry out the purposes of the New Mexico Research Applications Act; and
- O. enter into license agreements and contracts involving intellectual property and technological innovations, including agreements for patents, copyrights, franchises and trademarks.

53-7B-6. Applicability of other laws.

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

B. The research applications center shall be deemed:

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

(2) a local public body for purposes of the Procurement Code, except that the board may exempt a specific procurement from the application of the Procurement Code [13-1-28 NMSA 1978] if it makes a finding that compliance with the Procurement Code would impede the purposes of the New Mexico Research Applications Act; and

(3) a governmental entity for purposes of the Tort Claims Act [41-4-1 NMSA 1978]; provided that the research applications center may enter into agreements with insurance carriers to insure against risk in connection with its operations even though the risk may be included among the risks covered by the Tort Claims Act.

53-7B-7. Annual audit and report.

A. 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, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other records and papers relating to its financial standing. The certified public accountant shall make a determination as to whether the research applications center has complied with the provisions of the New Mexico Research Applications Act. The person performing the audit shall furnish copies of the audit report to the governor; the public regulation commission [secretary of state], where they shall be placed on file and made available for inspection by the general public; and the legislative finance committee.

B. An annual report of the activities during the previous fiscal year of the research applications center shall be provided by the board to the legislative finance committee at least ninety days in advance of each regular legislative session. The report shall contain an operating budget for the current fiscal year, a proposed budget for the next fiscal year, a list of the present employee positions and the salaries paid for each position and a list of all contracts entered into during the past fiscal year and the current fiscal year to date and the amount expended to date under each contract. The legislative finance committee 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 research applications center shall appear before any interim or standing legislative committee to provide an accounting of all activities.

53-7B-8. Conflicts of interest.

A. If any director, officer or employee of the research applications center is interested directly or indirectly or is an officer or employee of or has any ownership interest in a legal entity interested directly or indirectly in a contract or potential contract with the research applications center, except for any agency, instrumentality, institution or political subdivision of the state, the interest shall be disclosed to the board and shall be set forth in the minutes of the board. The director, officer or employee having the interest shall not participate on behalf of the research applications center in the authorization of the contract.

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

- (1) a clear description of confidential information that the research applications center may disclose to the director, officer or employee;
- (2) a clear description of the limitations on the use of confidential information by the director, officer or employee;
- (3) a confidentiality period that requires the director, officer or employee to hold confidential information in confidence until that information becomes generally publicly known;
- (4) that the director, officer or employee shall be prohibited from acquiring an intellectual property right;
- (5) for the return of all confidential information to the research applications center upon request;
- (6) remedies for unauthorized disclosure of confidential information under the nondisclosure agreement, which may provide for liquidated damages, specific performance or injunction against further disclosure or breach, in addition to all other remedies available at law or equity to the research applications center for unauthorized disclosure of confidential information by the director, officer or employee; and
- (7) for the award of reasonable attorney fees and costs incurred by the research applications center in seeking enforcement of the nondisclosure agreement.

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

53-7B-9. Contracts involving public employees.

Except as provided in Section 10 of the New Mexico Research Applications Act, the research applications center shall not enter into any contract involving services or property of a value in excess of twenty thousand dollars (\$20,000) with an employee of the state or one of its agencies, instrumentalities, institutions or political subdivisions or with a business in which the employee has a controlling interest unless the board makes a determination, in writing, that the employee:

- A. is employed by a university;
- B. is principally involved in research, public service, economic development or instruction; and
- C. is able to provide services that are not readily available from another person or is able to provide services that are less expensive or of higher quality than are otherwise available.

53-7B-10. Transfer of technology; ownership of intellectual property.

A. Notwithstanding the provisions of Section 9 [53-7B-9 NMSA 1978] of the New Mexico Research Applications Act, Section 10-16-7, 13-1-190, 21-1-17 or 21-1-35 NMSA 1978 or of any other statute, ordinance or policy regulating the conduct of public employees, an officer or employee of a university who is principally involved in research, public service, economic development or instruction may, subject to Subsection B of this section, apply to the secretary of economic development for permission to establish and maintain a substantial interest in a private entity that provides or receives equipment, material, supplies or services in connection with the research applications center in order to facilitate the transfer of technology developed by the officer or employee from the research applications center to commercial and industrial enterprises for economic development.

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

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

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

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

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

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

(6) the officer's or employee's interest in the private entity or benefit from the interest will not adversely affect any substantial state interest.

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

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