

### **21-28-1. Short title.**

Chapter 21, Article 28 NMSA 1978 may be cited as the "University Research Park and Economic Development Act".

History: Laws 1989, ch. 264, § 1; 2007, ch. 247, § 1.

### **21-28-2. Research park; purpose.**

The purpose of the University Research Park and Economic Development Act is to:

- A. promote the public welfare and prosperity of the people of New Mexico;
- B. foster economic development within New Mexico;
- C. forge links between New Mexico's educational institutions, business and industrial communities and government through the development of research parks on university real property; or
- D. engage in other cooperative ventures of innovative technological significance that will advance education, science, research, conservation, health care or economic development within New Mexico.

History: Laws 1989, ch. 264, § 2; 1998, ch. 54, § 1; 2007, ch. 247, § 2.

### **21-28-3. Definitions.**

As used in the University Research Park and Economic Development Act:

- A. "bond" or "bonds" means any bond, note or other evidence of indebtedness;
- B. "regents" means:
  - (1) in the case of an educational institution named in Article 12, Section 11 of the constitution of New Mexico, the board of regents of the institution;
  - (2) in the case of a community college, the community college board; or
  - (3) in the case of a technical and vocational institute, the governing board of the technical and vocational institute district;
- C. "research park" means research and development facilities, research institutes, testing laboratories, buildings, offices, light manufacturing, utility facilities, health care facilities, related businesses, government installations and similar facilities, including land and projects for the development of real property; all necessary appurtenances; and rights and franchises acquired, constructed, managed and developed by a university or under its authority that are suitable or necessary to promote the social welfare of New Mexico through the advancement of education, science, research, conservation, health care, economic development and related purposes regardless of whether the activities conducted in those facilities are directly related to research;
- D. "research park corporation" means any corporation formed pursuant to the provisions of the University Research Park and Economic Development Act;
- E. "technological innovations" means research, development, prototype assembly, manufacture, patenting, licensing, marketing and sale of inventions, ideas, practices, applications, processes, machines, technology and related property rights of all kinds; and
- F. "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].

History: Laws 1989, ch. 264, § 3; 1997, ch. 185, § 1; 1998, ch. 54, § 2; 2007, ch. 247, § 3.

#### **21-28-4. Research park corporations; authorization; members; terms; meetings; bylaws.**

- A. Any university may form, pursuant to the provisions of the Nonprofit Corporation Act [53-8-1 NMSA 1978] or the Business Corporation Act [53-11-1 NMSA 1978], one or more research park corporations, separate and apart from the state and the university, to promote, develop and administer research parks or technological innovations for scientific, educational and economic development opportunities in accordance with bylaws adopted by the research park corporation or economic development initiatives that support the teaching, research or service mission of the university.
- B. Each research park corporation shall be governed by, and all of its functions, powers and duties shall be exercised by, a board of directors appointed by the regents. Members of the board of directors may include the president of the university, the regents, officers and employees of the university and other persons selected by the regents.
- C. The board of directors shall elect a chair and other officers as the board of directors deems necessary.
- D. The board of directors shall adopt bylaws, in accordance with the provisions of the Nonprofit Corporation Act or the Business Corporation Act, as appropriate, governing the conduct of the research park corporation in the performance of its duties under the University Research Park and Economic Development Act.

History: Laws 1989, ch. 264, § 4; 2007, ch. 247, § 4.

#### **21-28-5. Powers of university as related to research parks.**

- A. The regents of each university shall have the power to implement and further the purposes of the University Research Park and Economic Development Act, including the power:
- (1) to establish, acquire, develop, maintain and operate research parks, including all necessary or suitable buildings, facilities and improvements, and to acquire, purchase, construct, improve, remodel, add to, extend, maintain, equip and furnish research parks or any building or facility, including research and service facilities and areas intended for the common use of research park tenants;
  - (2) to form research park corporations to aid and assist the university to acquire, construct, finance, operate and manage research parks;
  - (3) to form research park corporations to engage in economic development activities that support the teaching, research and service mission of the university, including creating learning opportunities for the students of the university;
  - (4) to lease, sell, exchange or transfer to research park corporations personal property, money and all or part of the land and facilities included in a research park, on terms and conditions established by the regents that are fair, just and reasonable to the university, and to enter into any other contract or agreement with the research park corporation for the construction, financing, operation and management of the research park;
  - (5) to lease, either directly or through a research park corporation, to any person, firm, partnership, government entity or any other lawful entity recognized under the laws of the state, any part or all of the land, buildings and facilities of the research park under guidelines established by the regents;
  - (6) to allow a lessee, exchanger or purchaser of university land to acquire or construct necessary or suitable buildings, facilities and improvements upon university land; provided that any improvements

acquired or constructed upon university land during the term of any lease of university land shall revert to and become the property of the university on termination of the lease or any renewal or extension;

(7) to construct buildings, facilities and improvements and to acquire, purchase, construct, improve, remodel, add to, extend, maintain, equip and furnish research parks or any building or facility, including research and service facilities and areas intended for common use of research park occupants;

(8) to finance all or part of the costs of the research park, including the purchase, construction, reconstruction, improvement, remodeling, addition to, extension, maintenance, equipment and furnishing;

(9) to conduct, sponsor, finance and contract in connection with technological innovations of all kinds; and

(10) to do anything else that the regents deem appropriate to further the purposes of the University Research Park and Economic Development Act either directly or indirectly.

B. The specification of powers in this section is not exclusive and shall not be construed to impair or negate any other power or authority enjoyed by the regents under the constitution or laws of this state.

History: Laws 1989, ch. 264, § 5; 2007, ch. 247, § 5.

#### **21-28-6. Powers of research park corporation.**

A research park corporation shall have all the powers necessary and convenient to carry out and effectuate the provisions of the University Research Park and Economic Development Act, including the power to:

- A. approve or disapprove proposals;
- B. sue and be sued in its corporate name;
- C. purchase, take, receive or otherwise acquire; own, hold, manage, develop, dispose of or use; and otherwise deal in and with property, including an interest in or ownership of intangible personal property, intellectual property or technological innovations;
- D. sell, convey, pledge, exchange, transfer, lease or otherwise dispose of its assets and properties for consideration upon terms and conditions that the corporation shall determine; provided that any sale, conveyance, pledge, exchange, transfer, lease or disposal of a real property interest by a research park corporation shall be made in accordance with the provisions of Section [13-6-2](#) NMSA 1978;
- E. make contracts, incur liabilities or borrow money at rates of interest that the research park corporation may determine;
- F. make and execute all contracts, agreements or instruments necessary or convenient in the exercise of the powers and functions of the corporation granted by the University Research Park and Economic Development Act;
- G. receive and administer grants, contracts and private gifts;
- H. invest and reinvest its funds;
- I. conduct its activities, carry on its operations, have offices and exercise the powers granted by the University Research Park and Economic Development Act;
- J. make and alter bylaws that may contain provisions indemnifying any person who is or was a director, officer, employee or agent of the corporation and that are consistent with the University Research Park and Economic Development Act, for the administration and regulation of the affairs of research park corporations;
- 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 of the research park corporation;
- N. employ fiscal consultants, attorneys and other consultants that may be required and to fix and pay their compensation; and
- O. enter into license agreements and contracts, including those involving intellectual property and technological innovations such as patents, copyrights, franchises and trademarks.

History: Laws 1989, ch. 264, § 6; 1998, ch. 54, § 3; 2007, ch. 247, § 6.

#### **21-28-7. Limitations on application of laws.**

A. A research park corporation shall not be deemed an agency, public body or other political subdivision of New Mexico, including for purposes of applying statutes and laws relating to personnel, procurement of goods and services, meetings of the board of directors, gross receipts tax, disposition or acquisition of property, capital outlays, per diem and mileage and inspection of records.

B. A research park corporation shall be deemed an agency or other political subdivision of the state for purposes of applying statutes and laws relating to the furnishing of goods and services to the university that operates it and the risk management fund.

C. A research park corporation, its officers, directors and employees shall be granted immunity from liability for any tort as provided in the Tort Claims Act [41-4-1 NMSA 1978]. A research park corporation may enter into agreements with insurance carriers to insure against a loss in connection with its operations even though the loss may be included among losses covered by the risk management fund of New Mexico.

**History:** Laws 1989, ch. 264, § 7; 1991, ch. 220, § 1; 1998, ch. 54, § 4.

#### **21-28-8. Issuance of revenue bonds.**

A research park corporation may issue negotiable revenue bonds or notes or both. The proceeds of the sale of bonds issued pursuant to the University Research Park and Economic Development Act shall be used to carry out the provisions of that act and to fund reserves for the research park corporation to pay interest on the bonds and to pay the necessary expenses of issuing the bonds, including bond counsel and fiscal adviser fees and other legal, consulting and printing fees and costs. All bonds may be issued in one or more series. The bonds of each issue shall be dated and bear interest as prescribed by the research park corporation. The bonds shall mature serially or otherwise not later than forty years from their date and may be redeemable before maturity at the option of the research park corporation at prices and under terms and conditions fixed by the research park corporation in its resolution or trust agreement providing for issuance of the bonds. The resolution or trust agreement shall also determine the form of the bonds, including the form of any interest coupons to be attached thereto, and shall fix the denominations of the bonds and the place of the payment of the principal and interest thereon. The bonds shall be executed on behalf of the research park corporation as special obligations of the research park corporation payable only from the funds specified in the University Research Park and Economic



Development Act and shall not be a debt of this state, any political subdivision of this state or any university, and neither this state nor any political subdivision nor university shall be liable for the debts of the research park corporation. The resolution or trust agreement may provide for registration of the bonds as to ownership and for successive conversion and reconversion from registered to bearer bonds and vice versa. The bonds may be registered in the principal office of the research park corporation. After the registration and delivery to the purchasers, the bonds are incontestable and constitute special obligations of the research park corporation, and the bonds and coupons are negotiable instruments under the laws of this state. The bonds may be sold at public or private sale by the research park corporation at prices and in accordance with procedures and terms the research park corporation determines to be advantageous and reasonably obtainable. The research park corporation may provide for replacement of any bond that may be mutilated or destroyed.

#### **H 21-28-9. Status of bonds.**

Bonds and other obligations issued under the provisions of the University Research Park and Economic Development Act shall be deemed issued on behalf of the university, but shall not be deemed to constitute a debt, liability, obligation of or a pledge of the faith and credit of this state or any political subdivision thereof or any university, but shall be payable solely from the revenue or assets of the research park corporation pledged for that payment. Each obligation issued on behalf of the research park corporation under the University Research Park and Economic Development Act shall contain on its face a statement to the effect that neither this state nor any political subdivision, university or research park corporation shall be obligated to pay the same or the interest thereon except from the revenues or assets pledged therefor and that neither the faith and credit nor the taxing power of this state, any political subdivision thereof or any university is pledged to the payment of the principal of or the interest on such obligation.

History: Laws 1989, ch. 264, § 9; 2007, ch. 247, § 8. istory: Laws 1989, ch. 264, § 8; 2007, ch. 247, § 7.

#### **21-28-10. Refunding bonds.**

The board of directors of a research park corporation may by resolution provide for the issuance of refunding bonds to refund any outstanding bonds issued under the University Research Park and Economic Development Act, together with redemption premiums, if any, and interest accrued or to accrue thereon. Provisions governing the issuance and sale of bonds under the University Research Park and Economic Development Act govern the issuance and sale of refunding bonds insofar as applicable. Refunding bonds may be exchanged for the outstanding bonds or may be sold and the proceeds used to retire the outstanding bonds. Pending the application of the proceeds of any refunding bonds, with any other available funds, to the payment of the principal, interest and any redemption premiums on the bonds being refunded, and if so provided or permitted in the resolution of the research park corporation authorizing the issuance of such refunding bonds, to the payment of any interest on refunding bonds and any expenses incurred in connection with refunding, the proceeds may be placed in escrow and invested in securities that are unconditionally guaranteed by the United States and that shall mature or be subject to redemption by the holders thereof, at the option of the holders, not later than the

respective dates when the proceeds, together with the interest accruing thereon, will be required for the purposes intended.

History: Laws 1989, ch. 264, § 10; 2007, ch. 247, § 9.

**21-28-11. Trust agreements authorized.**

In the discretion of the research park corporation, any bonds issued under the provisions of the University Research Park and Economic Development Act may be secured by a trust agreement by and between the research park corporation and a corporate trustee, which may be a bank or trust company having trust powers within or without the state. The trust agreement or the resolution providing for the issuance of bonds may pledge or assign all or any part of the revenues or assets of the research park corporation. The trust agreement or resolution may contain provisions for protecting and enforcing the rights and remedies of the holders of any bonds as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the research park corporation in relation to the purposes to which bond proceeds may be applied, the disposition or pledging of the revenues or assets of the research park corporation and the custody, safeguarding and application of all money. It is lawful for any bank or trust company incorporated under the laws of the state that may act as depository of the proceeds of bond revenues or other money hereunder to furnish indemnifying bonds or to pledge securities that may be required by the research park corporation. Any trust agreement or resolution may set forth the rights and remedies of the holders of any bonds and of the trustee and may restrict the individual right of action by any holders. In addition, any trust agreement or resolution may contain other provisions as the research park corporation may deem reasonable and proper for the security of the holders of any bonds. All expenses incurred in carrying out the provisions of a trust agreement or resolution may be paid from the revenues or assets pledged or assigned to the payment of the principal of and the interest on bonds or from any other funds available to the research park corporation.

History: Laws 1989, ch. 264, § 11; 2007, ch. 247, § 10.

**21-28-12. Pledge of assets or revenues of research park corporation.**

The pledge of any assets or revenues of the research park corporation to the payment of the principal of or the interest on any bonds shall be valid and binding from the time when the pledge is made, and any such assets or revenues shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the research park corporation, irrespective of whether such parties have notice thereof. Nothing in this section shall be construed to prohibit the research park corporation from selling any assets subject to any such pledge except to the extent that any such sale may be restricted by the trust agreement or resolution providing for the issuance of such bonds.

History: Laws 1989, ch. 264, § 12.

**21-28-13. All money received from sale of bonds deemed trust funds.**

All money received by a research park corporation from bonds issued under the provisions of the University Research Park and Economic Development Act shall be deemed funds to be held in trust, applied as provided in that act or transferred to other research park corporations, nonprofit corporations or the university as the research park corporation deems appropriate. The resolution authorizing any obligations or the trust agreement securing the obligations may provide that any of the money covered by this section may be temporarily invested pending its disbursement. The resolution shall provide that any officer with whom, or any bank or trust company with which, the money is deposited shall act as trustee of the money and shall hold and apply the money for the purposes of the University Research Park and Economic Development Act, subject to provisions that rules under that act and the resolution or trust agreement may specify. Any such money described in this section received by a research park corporation may be invested as provided in the University Research Park and Economic Development Act.

History: Laws 1989, ch. 264, § 13; 1991, ch. 220, § 2; 2007, ch. 247, § 11.

#### **21-28-14. Limitation of liability.**

The members of the board of directors of a research park corporation, while acting within the scope of their authority, and any person acting in their behalf, while acting within the scope of the person's authority, shall not be personally liable for the corporation's obligations.

History: Laws 1989, ch. 264, § 14; 1991, ch. 220, § 3.

#### **21-28-15. Rights of holders of bonds.**

Any holder of bonds issued under the provisions of the University Research Park and Economic Development Act or any coupons appertaining thereto, and the trustee under any trust agreement or resolution authorizing the issuance of those bonds, except as the rights given pursuant to that act may be restricted by a trust agreement or resolution, may, either at law or in equity, by suit, mandamus or other proceeding, protect and enforce any and all rights under the laws of this state or granted by that act or under the trust agreement or resolution or under any other contract executed by the research park corporation pursuant to that act, and may enforce and compel the performance of all duties required by that act or by the trust agreement or resolution to be performed by the research park corporation or by any officer thereof.

History: Laws 1989, ch. 264, § 15; 2007, ch. 247, § 12.

#### **21-28-16. Legal investments; tax exemption.**

All bonds issued by a research park corporation under the University Research Park and Economic Development Act are legal and authorized investments for banks, savings banks, trust companies, savings and loan associations, insurance companies, fiduciaries, trustees and guardians and for the sinking funds of political subdivisions, departments, institutions and agencies of this state. When accompanied by all unmatured coupons appurtenant to them, the bonds are sufficient security for all deposits of state funds and of all funds of any board in control of public money at the par value of the

bonds. The bonds and the income from the bonds are free from taxation within this state, except estate taxes. The research park corporation in its discretion and by those means as it deems appropriate may waive the exemption from federal income taxation of interest on the bonds. The bonds subject to federal income taxation issued by the research park corporation shall be payable as to principal and interest with such frequency as may be required by the research park corporation.

History: Laws 1989, ch. 264, § 16; 1991, ch. 220, § 4; 2007, ch. 247, § 13.

#### **21-28-17. Annual report and audit.**

A. A research park corporation shall, within ninety days following the close of each fiscal year, submit an annual report of its activities for the preceding year as required by the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978] or the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978] under which the research park is incorporated. The board of directors of the research park corporation shall annually contract with an independent certified public accountant, licensed by the state, to perform an examination and audit of the accounts and books of the research park corporation, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other records and papers relating to its financial standing, and the certified public accountant shall make a determination as to whether the research park corporation has complied with the provisions of the University Research Park and Economic Development Act. The person performing the audit shall furnish copies of the audit report to the regents of the university and the secretary of state, where they shall be placed on file and made available for inspection by the general public.

B. Subject to the provisions of any contract with bondholders or noteholders, a research park corporation shall prescribe a system of accounts.

C. The costs of audits and examinations performed pursuant to this section shall be paid by the research park corporation.

History: Laws 1989, ch. 264, § 17; 2007, ch. 247, § 14; 2013, ch. 75, § 13.

#### **21-28-19. Gifts by persons, corporations, institutions and associations.**

A. Any person or domestic corporation or association may make contributions or gifts, grants, bequests, devises or loans to a research park corporation.

B. Any university or nonprofit corporation having funds available for research and development, regardless of the provisions of its charter, certificate of incorporation or other articles of organization including bylaws, may loan the funds to a research park corporation under such terms and conditions as may be mutually agreed upon for the purposes of a research park.

History: Laws 1989, ch. 264, § 19.

#### **21-28-20. Conflicts of interest.**

A. If any director, officer or employee of a research park corporation is interested either directly or indirectly or is an officer or employee of or has any ownership interest in any firm or legal entity interested directly or indirectly in any contract with the research park corporation, except for any agency, instrumentality, department or political subdivision of the state, such interest shall be disclosed to and shall be set forth in the minutes of the research park corporation that is a party to the contract.



The director, officer or employee having that interest shall not participate on behalf of the research park corporation in the authorization of the contract.

B. No director, officer or employee of a research park corporation or state officer shall accept any gratuities in connection with the issuance of bonds under the University Research Park and Economic Development Act, nor shall that individual be reimbursed for expenses incident to the issuing of bonds except such expenses as are reimbursed as provided under the provisions of rules of the regents.

C. Nothing in this section shall prohibit an officer, director or employee of a financial institution from participating as a member of the board of directors of a research park corporation in setting general policies of the research park corporation, 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 University Research Park and Economic Development Act because an officer, director or employee of the financial institution serves as a member of the board of directors of the research park corporation.

D. Any person who violates the provisions of this section is guilty of a misdemeanor and shall be sentenced for a definite term of less than one year, a fine of one thousand dollars (\$1,000), or both.

History: Laws 1989, ch. 264, § 20; 2007, ch. 247, § 15.

#### **21-28-21. Dissolution of research park corporation.**

On termination or dissolution of a research park corporation, all rights and properties of the research park corporation shall pass to and be vested in the university which formed the research park corporation, subject to the rights of any bondholders, lienholders, creditors or ownership interests in the research park corporation.

History: Laws 1989, ch. 264, § 21; 1991, ch. 220, § 5.

#### **21-28-22. Agreement with the state.**

The state does hereby pledge to and agree with the holders of any bonds or notes issued under the University Research Park and Economic Development Act that the state will not limit or alter the rights hereby vested in the research park corporation by that act to fulfill the terms of any agreement made with the holders thereof or in any way impair the rights and remedies of those holders until the bonds or notes, together with the interest thereon, with interest on any unpaid installments of interest and all costs and expenses in connection with any action or proceedings by or on behalf of those holders, are fully met and discharged. A research park corporation is authorized to include this pledge and agreement of the state in any agreement with the holders of the bonds or notes.

History: Laws 1989, ch. 264, § 22; 2007, ch. 247, § 16.

#### **21-28-23. Work to conform to federal law when aided by federal appropriations.**

In the event of congress making appropriations for the conduct of work similar to that specified in the University Research Park and Economic Development Act, the work of the research park shall conform to the requirements imposed as the conditions for those federal appropriations in order that the work of the research park may be aided and extended by means of those federal appropriations for scientific, engineering and industrial research.

History: Laws 1989, ch. 264, § 23; 2007, ch. 247, § 17.

**21-28-24. Contracts involving officers or employees of educational institutions and state agencies or political subdivisions.**

A research park corporation 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 university or with a business in which the employee has a controlling interest, except as provided in Section 21-28-25 NMSA 1978 if the employee has a controlling interest, unless the president of the university or the president's designee makes a determination, in writing, that the employee 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 is otherwise available.

History: Laws 1989, ch. 264, § 24; 2007, ch. 247, § 18.

**21-28-25. Transfer of technology developed by universities; officer or employee interest in private entity.**

A. Notwithstanding any other provision of state law, an officer or employee of a university may, subject to Subsection B of this section, apply to the university which, under policies established by the regents as provided in Subsection E of this section, may grant permission to establish and maintain a substantial interest in a research park corporation or private entity which provides or receives equipment, material, supplies or services in connection with the university or a research park corporation in order to facilitate the transfer of technology developed by the officer or employee of the university from the university to commercial and industrial enterprises for economic development.

B. To receive the permission pursuant to Subsection A of this section, the officer or employee must receive the approval of the president or his designee of the university at which he is employed. The president of the university may grant approval to the officer or employee only if all of the following conditions are met:

- (1) the officer or employee provides a detailed description of his interest in the research park corporation or private entity to the president;
- (2) the nature of the proposed undertaking is fully described to the president;
- (3) the officer or employee demonstrates to the satisfaction of the president that the proposed undertaking may benefit the economy of this state;

(4) the officer or employee demonstrates to the satisfaction of the president that the proposed undertaking will not adversely affect research, public service or instructional activities at the university; and

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

C. The president of a university may authorize an officer or employee of the university to establish and maintain a substantial interest in a research park corporation or private entity if all of the following conditions are met:

(1) the application to maintain the substantial interest is approved by the president of the university at which the officer or employee is employed;

(2) the application contains a detailed description of the officer's or employee's interest in the research park corporation or private entity;

(3) the application contains a detailed description of the proposed undertaking;

(4) the application demonstrates to the satisfaction of the president of the university that the proposed undertaking will benefit the economy of this state;

(5) the application demonstrates to the satisfaction of the president of the university that the proposed undertaking will not adversely affect research, public service or instructional activities at the university; and

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

D. On recommendation of the regents, the president of the university at which the officer or employee is employed may require that the university or a research park corporation have a share in any royalties or shares of the research park corporation or other proceeds or equity positions from the proposed undertaking of the private entity.

E. The regents may establish policies for the implementation of this section.

History: Laws 1989, ch. 264, § 25.

