

VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

CHAPTER 942

An Act to amend the Code of Virginia by adding in Article 3 of Chapter 22 of Title 2.2 a section numbered 2.2-2233.2, relating to the Biotechnology Commercialization Loan Fund.

[S 646]

Approved April 15, 2004

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 3 of Chapter 22 of Title 2.2 a section numbered 2.2-2233.2 as follows:

§ 2.2-2233.2. Biotechnology Commercialization Loan Fund; created; purposes; report.

A. From such funds as may be appropriated by the General Assembly and any gifts, grants, or donations from public or private sources, there is created in the state treasury a special nonreverting, permanent fund, to be known as the Biotechnology Commercialization Loan Fund (the Fund), to be administered by the Authority. The Fund shall be established on the books of the Comptroller. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund at the end of each fiscal year, including interest thereon, shall not revert to the general fund but shall remain in the Fund. Expenditures and disbursements from the Fund, which shall consist of loans, shall be made by the State Treasurer on warrants issued by the Comptroller upon written request bearing the signature of the chairman or the vice chairman of the Authority, or, if so authorized by the Authority, bearing his facsimile signature, and the official seal of the Authority.

B. Moneys in the Fund shall be used for the sole purpose of financing technology transfer and commercialization activities related to biotechnology inventions made, solely or in cooperation with other organizations, at qualifying institutions. Such activities shall include, but not be limited to, legal and business consulting services and expenses, including employee compensation, relating to assessing the patentability of inventions, obtaining patent protection for such inventions in the United States and internationally, marketing for such inventions and patents thereon to potential licensees, and negotiating licensing or commercialization agreements with licensees, as well as development of new technology transfer and commercialization programs at qualifying institutions.

The maximum amount of any loans outstanding under the Fund shall be \$3,000,000.

C. Qualifying institutions may apply to the Fund for loans to the extent that such institution's outstanding principal balance at any one time does not exceed \$500,000. Loan applications shall include business plans that detail and explain the anticipated uses of funds received and the proposed repayment schedule.

Loans from the Fund shall take the form of a contractual commitment to the recipient qualifying institution for a line of credit for up to three years, along with an approved schedule of repayment. During the contractual period the recipient qualifying institution may draw upon the line of credit for any expense for which the loan was made, not to exceed the stated amount of the loan award. At the end of the contractual period, the line of credit shall terminate and the outstanding balance of the withdrawals on that line of credit shall become the established basis for that loan.

During the contractual period, deferred interest shall accumulate on the outstanding balance at a rate of three percent compounded annually. Borrowing institutions may prepay part or all of any loan received from the Fund without penalty, and, if repayment is completed within the contractual period of the line of credit, the accumulated interest obligation shall be forgiven.

Repayment of the established basis shall consist of a maximum of 84 equal monthly payments of principal and compounded interest at the determined rate beginning on the first day of the month following the end of the contractual period.

D. Decisions to make loans to applicants from the Fund shall be made by a panel, which shall consist of the President of the Center for Innovative Technology, the Director of the Department of Planning and Budget and the Executive Director of the Virginia Economic Development Partnership, or their designees. The President of the Center for Innovative Technology, or his designee, shall serve as chair. The panel may seek the advice of experts in technology, business, technology transfer or other relevant fields as appropriate in devising guidelines for the implementation of this loan program as well as in making loan decisions.

Specific guidelines for the award of funds from this program shall be established and maintained by the Authority, in consultation with the Virginia Economic Development Partnership and the State Council of Higher Education.

E. A recipient of a loan from the Fund shall report annually to the panel on the uses of loan proceeds during the previous year and on plans for the use of any additional funds it may plan to draw. Such reports shall be filed for so long as the recipient owes money to the Fund.

F. The chairman of the Authority shall report annually to the Governor and the General Assembly on activities of the Fund, including a detailed list of awards committed, the amount and description of each approved award, and an assessment of the effectiveness of the Fund in encouraging the commercialization of bioscience and biotechnology inventions made at Virginia institutions of higher education.

G. A record transmitted or delivered by a loan applicant or a loan recipient to a public body in the conduct of its duties under this section shall be excluded from disclosure under the Virginia Freedom of Information Act to the extent such record reveals information that (a) is the property of the submitting party, (b) has independent economic value to the owner that causes it to be maintained in secrecy by the owner, and (c) is clearly and specifically identified in writing as proprietary, confidential information at the time of its delivery or transmission to the public body. Nothing in this paragraph shall be construed to prevent the disclosure of information regarding the financial or administrative oversight of the Fund by the Authority.

H. For purposes of this section:

"Determined rate" means the rate of interest paid by the Commonwealth on the most recent sale of tax-exempt bonds backed by the full faith and credit of the Commonwealth.

"Qualifying institution" means an institution of higher education in the Commonwealth or its associated intellectual property foundation that maintains a recognized program of technology transfer, licensing, or commercialization in conformance with the guidelines established by the State Council of Higher Education for Virginia pursuant to § 23-9.10:4.

I. No loan shall be made to any entity which conducts human stem cell research from human embryos, or for any loan to conduct such research; however, research conducted using adult stem cells may be funded.