

VIRGINIA ACTS OF ASSEMBLY -- 2009 RECONVENED SESSION

CHAPTER 853

An Act to amend and reenact §§ 2.2-2233.1, 2.2-2515, 2.2-2516, and 58.1-339.4 of the Code of Virginia, relating to promotion of science and technology-based research, development, and commercialization in the Commonwealth.

[S 1338]

Approved April 8, 2009

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-2233.1, 2.2-2515, 2.2-2516, and 58.1-339.4 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-2233.1. Commonwealth Research Commercialization Fund; continued; purposes; report.

A. For purposes of this section:

"Qualified research and technologies" means research programs or technologies substantially focused in the following fields: energy, conservation, environment, microelectronics, robotics and unmanned vehicle systems, advanced shipbuilding, or lifespan biology and medicine.

"Qualifying institution" means a public or private institution of higher education in the Commonwealth or its associated intellectual property foundation that adopts a policy regarding the ownership, protection, assignment, and use of intellectual property pursuant to § 23-4.3.

"SBIR" means the Small Business Innovation Research Program authorized under 15 U.S.C. § 638.

"STTR" means the Small Business Technology Transfer Program authorized under 15 U.S.C. § 638.

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 Commonwealth ~~Technology~~ Research Commercialization 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 may consist of grants or 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 attracting public and private research funding for institutions of higher education, in order to increase technological and economic development in Virginia. Awards from the Fund shall be made to Virginia public institutions of higher education or to their associated intellectual property foundations.

C. For purposes of awards, the Fund shall have four components: (i) a matching funds program to leverage federal and private research dollars; (ii) a strategic enhancement program to upgrade the research capacity of those academic departments that have demonstrated the ability to perform innovative research in technology fields that has strong potential to contribute to economic development in the Commonwealth; (iii) a program to upgrade research capacity in key departments of the institutions in order to attract specific companies to locate or expand in Virginia; and (iv) a program to enhance the capability of the institutions of higher education to commercialize technologies developed through their research.

Awards for the matching funds component shall be contingent upon the approval of the institution's grant proposal for federal or private funds.

Awards from the Fund shall be matched on at least a dollar-for-dollar basis by the respective institution of higher education, with private funds, or combinations thereof. However, for good cause, this requirement may be waived, in whole or in part, by the chairman of the Authority, provided that such action is reported to the Chairmen of the House Appropriations and Senate Finance Committees at least 10 days prior to the award or disbursement of such funds for such purpose.

D. Awards shall be based on scientific merit and economic development potential of research programs in the following fields: aerospace, biotechnology, energy, environmental and information technologies, high performance manufacturing, sensor sciences, telecommunications, and transportation. However, for good cause, awards supporting research in other relevant fields or disciplines may be made by the chairman of the Authority, provided that such action is reported to the Chairmen of the House Appropriations and Senate Finance Committees at least 10 days prior to the award or disbursement of such funds for such purpose.

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. These guidelines shall address, at a minimum, the application process, and the composition and operation of proposal review panels, and give special emphasis to fostering collaboration between institutions of higher education and partnerships between institutions of higher education and business and industry.

The chairman of the Authority shall coordinate the evaluation of proposals, to be conducted by review panels with the appropriate science and technology expertise, drawn from federal agencies and academic and industrial research institutions across the country.

Recommendations on the grants shall be made by representatives from the Virginia Research and Technology Advisory Commission pursuant to § 2.2-2515, the Virginia Economic Development Partnership, and the State Council of Higher Education based on the recommendations of the review panels.

C. Awards from the Fund shall be made by the Authority. The chairman of the Authority shall coordinate the evaluation of proposals and may form review panels with the appropriate science and technology expertise to assist in reviewing applicants for grants or loans from the Fund.

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. These guidelines shall address, at a minimum, the application process and the composition and operation of proposal review panels, and shall give special emphasis to fostering collaboration between institutions of higher education and partnerships between institutions of higher education and business and industry.

D. Awards from the Fund may be granted for the following programs:

1. For fiscal years beginning with a Fund balance of less than \$7 million, an SBIR matching funds program for Virginia-based technology businesses. Businesses meeting the following criteria shall be eligible to apply for an award:

- a. The applicant has received a Phase I SBIR award from the National Institute of Health targeted at the development of qualified research or technologies;*
- b. The applicant employs fewer than 12 full-time employees;*
- c. At least 51 percent of the applicant's employees reside in Virginia; and*
- d. At least 51 percent of the applicant's property is located in Virginia.*

Applicants shall be eligible for matching grants of up to \$50,000 of the Phase I award. All applicants shall be required to submit a commercialization plan with their application.

2. For fiscal years beginning with a Fund balance of \$7 million or greater, an SBIR and STTR matching funds program for Virginia-based technology businesses. Businesses meeting the following criteria shall be eligible to apply for an award:

- a. The applicant has received an SBIR or STTR award targeted at the development of qualified research or technologies;*
- b. The applicant employs fewer than 12 full-time employees;*
- c. At least 51 percent of the applicant's employees reside in Virginia; and*
- d. At least 51 percent of the applicant's property is located in Virginia.*

Applicants shall be eligible for matching grants of up to \$100,000 for Phase I awards and up to \$500,000 for Phase II awards. All applicants shall be required to submit a commercialization plan with their application.

3. A matching funds program to assist qualifying institutions in leveraging federal and private funds designated for the commercialization of qualified research or technologies. The chairman of the Authority is authorized to issue letters of financial commitment to assist applicants in leveraging federal and private funds.

4. A facilities enhancement loan program for qualifying institutions and political subdivisions to provide lease or credit guarantees to assist in financing facilities utilized for commercializing qualified research or technologies developed at qualifying institutions. The facilities enhancement loan program shall have the following parameters:

a. Qualifying institutions and political subdivisions may apply to the Fund for loans to the extent that such institution's or political subdivision'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.

b. Loans from the Fund shall take the form of a contractual commitment to the recipient qualifying institution or political subdivision for a line of credit for up to five years, along with an approved schedule of repayment. During the contractual period the recipient qualifying institution or political subdivision 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.

c. During the contractual period, deferred interest shall accumulate on the outstanding balance at a rate of three percent compounded annually. Borrowing institutions or political subdivisions 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.

d. 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.

E. The chairman of the Authority shall provide the Governor and the General Assembly with an annual report to include a detailed list of awards *and loans* committed, the amount of each approved award *or loan*, a description of the approved proposals, and the amount of federal or private matching funds anticipated where applicable, and an assessment of the effectiveness of the Fund. ~~in attracting public and private research funding and increasing technological and economic development in Virginia.~~

§ 2.2-2515. Powers and duties of the Commission.

The Commission shall:

1. Undertake studies and gather information and data in order to accomplish its purposes as set forth in § 2.2-2513, and to formulate and present its recommendations to the Governor and the General Assembly;

2. ~~Make recommendations upon all proposals submitted to the Grant Allocation Committee, as described in paragraph 4 of subsection D of § 2.2-2233.1, for grant allocations to be disbursed from the Commonwealth Technology Research Fund created by § 2.2-2233.1;~~

3. Apply for, accept, and expend gifts, grants, or donations from public, quasi-public or private sources and state funds that may be appropriated by the General Assembly to carry out its purpose; and

4. Report annually its findings and recommendations to the Governor. The Commission may make interim reports to the Governor as it deems advisable.

§ 2.2-2516. Funding for Commission's activities.

Funding necessary to support the Commission's work, including but not limited to the compensation and reimbursement pursuant to subsection E of § 2.2-2514, shall be provided by the Innovative Technology Authority ~~and other sources pursuant to subdivision 2 of § 2.2-2515.~~

§ 58.1-339.4. Qualified equity and subordinated debt investments tax credit.

A. As used in this section:

"Commercialization investment" means a qualified investment in a qualified business that was created to commercialize research developed at or in partnership with an institution of higher education.

"Equity" means common stock or preferred stock, regardless of class or series, of a corporation; a partnership interest in a limited partnership; or a membership interest in a limited liability company, which is not required or subject to an option on the part of the taxpayer to be redeemed by the issuer within three years from the date of issuance.

"Qualified business" means a business which (i) has annual gross revenues of no more than \$3 million in its most recent fiscal year, (ii) has its principal office or facility in the Commonwealth, (iii) is engaged in business primarily in or does substantially all of its production in the Commonwealth, (iv) has not obtained during its existence more than \$3 million in aggregate gross cash proceeds from the issuance of its equity or debt investments (not including commercial loans from chartered banking or savings and loan institutions), and (v) is ~~not~~ primarily engaged, or is ~~not~~ primarily organized to engage, in any of the following types of businesses:

- 1. Banks;*
- 2. Savings and loan institutions;*
- 3. Credit or finance;*
- 4. Financial, broker or investment;*
- 5. Businesses organized for the primary purpose of rendering professional services as defined in Chapter 7 (§ 13.1-542 et seq.) of Title 13.1;*
- 6. Accounting;*
- 7. Government, charitable, religious or trade institutions or organizations;*
- 8. Conventional coal, oil and gas, and mineral exploration;*
- 9. Insurance;*
- 10. Real estate design or engineering;*
- 11. Construction or construction contracting;*
- 12. Business consulting or business brokering;*
- 13. Residential housing, real estate brokerage, sale or leasing businesses, or real estate development;*

or

14. Any other business which the Department of Taxation determines by regulation to be against the public interest, the purposes of this section or in violation of the law.

the fields of advanced computing, advanced materials, advanced manufacturing, agricultural technologies, biotechnology, electronic device technology, energy, environmental technology, information technology, medical device technology, nanotechnology, or any similar technology-related field determined by regulation by the Department of Taxation to fall under the purview of this section.

"Qualified investment" means a cash investment in a qualified business in the form of equity or subordinated debt; however, an investment shall not be qualified if the taxpayer who holds such

investment, or any of such taxpayer's family members, or any entity affiliated with such taxpayer, receives or has received compensation from the qualified business in exchange for services provided to such business as an employee, officer, director, manager, independent contractor or otherwise in connection with or within one year before or after the date of such investment. For the purposes hereof, reimbursement of reasonable expenses incurred shall not be deemed to be compensation.

"Subordinated debt" means indebtedness of a corporation, general or limited partnership, or limited liability company that (i) by its terms required no repayment of principal for the first three years after issuance; (ii) is not guaranteed by any other person or secured by any assets of the issuer or any other person; and (iii) is subordinated to all indebtedness and obligations of the issuer to national or state-chartered banking or savings and loan institutions.

B. For taxable years beginning on or after January 1, 1999, a taxpayer shall be allowed a credit against the tax levied pursuant to §§ 58.1-320 and 58.1-360 in an amount equal to 50 percent of such taxpayer's qualified investments during such taxable year. No credit shall be allowed to any taxpayer that has committed capital under management in excess of \$10 million and engages in the business of making debt or equity investments in private businesses, or to any taxpayer that is allocated a credit as a partner, shareholder, member or owner of an entity that engages in such business.

C. The amount of any credit attributable to a qualified investment by a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, as the case may be, as they may determine.

D. The aggregate amount of the credit for each taxpayer shall not exceed the lesser of (i) the tax imposed for such taxable year or (ii) \$50,000. Any credit not usable for the taxable year in which the credit was allowed may be, to the extent usable, carried over for the next 15 succeeding taxable years or until the total amount of the tax credit has been taken, whichever occurs first.

E. The amount of tax credits available under this section for a calendar year shall be \$5 million. *Of the amount of available credits, one-half of the amount shall be allocated exclusively for credits for commercialization investments. Such allocation of tax credits shall constitute the minimum amount of tax credits to be allocated for commercialization investments. However, if the amount of tax credits requested for commercialization investments is less than one-half of the total amount of credits available under this section, the balance of such credits shall be allocated for qualified investments in any qualified business under this section.*

F. Unless the taxpayer transfers the equity received in connection with a qualified investment as a result of (i) the liquidation of the qualified business issuing such equity, (ii) the merger, consolidation or other acquisition of such business with or by a party not affiliated with such business, or (iii) the death of the taxpayer, any taxpayer that fails to hold such equity for at least three full calendar years following the calendar year for which a tax credit for a qualified investment is allocated pursuant to this section shall forfeit both used and unused tax credits and in addition shall pay the Department of Taxation interest on the total allowed credits at the rate of one percent per month, compounded monthly, from the date the tax credits were allocated to the taxpayer. The Department of Taxation shall deposit any amounts received under this subsection into the general fund of the Commonwealth.

G. Prior to December 31, 1998, the Department of Taxation shall promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) (i) establishing procedures for claiming the tax credit provided by this section and (ii) providing for the allocation of tax credits among taxpayers requesting credits in the event the amount of credits for which requests are made exceeds the available amount of credits in any one calendar year. Notwithstanding the foregoing, the Department of Taxation shall permit an application for certification as a qualified business to be filed at any time during the calendar year regardless of when the investment was made during the calendar year.

2. That the provisions of this act relating to the qualified equity and subordinated debt investment tax credit shall apply to applications for credits made for taxable years beginning on or after January 1, 2009. Nothing in this act shall be construed or interpreted to affect any credits awarded to a taxpayer for taxable years prior to January 1, 2009.

3. That no award from the Commonwealth Research Commercialization Fund may be provided if the otherwise qualified business performs research in Virginia on human cells or tissue derived from induced abortions or from stem cells obtained from human embryos, nor shall any award from the Fund be used for such research. The foregoing provision shall not apply to research conducted using stem cells other than embryonic stem cells.

4. That no investment shall be qualified pursuant to § 58.1-339.4 of the Code of Virginia if the otherwise qualified business performs research in Virginia on human cells or tissue derived from induced abortions or from stem cells obtained from human embryos. The foregoing provision shall not apply to research conducted using stem cells other than embryonic stem cells.