

VIRGINIA ACTS OF ASSEMBLY -- 2017 SESSION

CHAPTER 320

An Act to amend and reenact §§ 2.2-2233.1 and 23.1-1303 of the Code of Virginia, relating to governing boards of public institutions of higher education; annual report; investments.

[H 2171]

Approved March 13, 2017

Be it enacted by the General Assembly of Virginia:

- 1. That §§ 2.2-2233.1 and 23.1-1303 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:

"Guidelines" means guidelines developed in consultation with the Secretary of Technology and published by the Authority regarding the administration of the Commonwealth Research Commercialization Fund.

"Qualified research and technologies" means research programs or technologies identified in the Commonwealth Research and Technology Strategic Roadmap as areas of focus for technology investment in the Commonwealth, which may include but are not limited to the fields of energy, conservation, environment, microelectronics, robotics and unmanned vehicle systems, advanced shipbuilding, or lifespan biology and medicine.

"Qualifying institution" means (i) 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 subdivision B ~~43~~ 14 of § 23.1-1303 or (ii) a federal research facility located in the Commonwealth.

"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.

B. 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 Research Commercialization Fund (the Fund), to be administered by the Authority pursuant to the guidelines. 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.

C. Awards from the Fund shall be made by the Authority, pursuant to the guidelines and upon the recommendation of the Research and Technology Investment Advisory Committee. Awards from the Fund shall only be made to applications that further the goals set forth in the Commonwealth Research and Technology Strategic Roadmap.

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.

The length of time that a business has been incorporated shall have no bearing on an applicant's eligibility for an award. 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.

The length of time that a business has been incorporated shall have no bearing on an applicant's eligibility for an award. 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 and other research 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 commercialization program to incentivize the commercialization of a product or service related to a qualifying technology. An eligible applicant shall have operations in the Commonwealth, and the project proposed by the applicant shall:

- a. Commercialize a product or service related to a qualifying technology;
- b. Have a demonstrable economic development benefit to the Commonwealth;
- c. Match the award, on at least a one-to-one basis, from other available funds, including funds from an institution of higher education collaborating on the project; and
- d. Have a reasonable probability of enhancing the Commonwealth's national and global competitiveness.

Priority shall be given to those applications that propose projects that (i) are collaborative between private and nonprofit entities, public or private agencies, and qualifying institutions or research institutions; (ii) project a short time to commercialization, although transformative projects with a longer projected time to commercialization shall not be discounted; (iii) have active third-party equity holders; (iv) have technology and management in place that are likely to successfully bring the product or service to the marketplace; or (v) are from applicants who have a history of successful projects funded by the Fund. The length of time that a business has been incorporated shall have no bearing on an applicant's eligibility for an award.

5. An eminent researcher recruitment program to acquire and enhance research superiority at public qualifying institutions. For purposes of applications pursuant to this subdivision, the applicant shall be a state institution of higher education. In order to qualify for an award, the applicant shall:

- a. Demonstrate that the researcher being recruited would create research superiority at the institution;
- b. Demonstrate that the institution making the application has sufficient technology transfer processes and other research capabilities in place to meet the needs of the researcher being recruited;
- c. Involve a private sector partner with business operations in the Commonwealth;
- d. Demonstrate that the research conducted by the researcher is in a qualifying technology; and
- e. Match the award, on at least a one-to-one basis, with 50 percent of the match from the applicant and 50 percent of the match from the private sector partner.

E. Any application for an award from the Fund shall include a strategic plan that, at a minimum, identifies (i) how the proposed project fits into the Commonwealth Research and Technology Strategic Roadmap, (ii) other funds that may be reasonably expected from other sources as a result of an award from the Fund, (iii) the potential for commercialization of the research or technology underlying the application, and (iv) opportunities for public and private collaboration.

F. No award shall be made from the Fund until a performance agreement or memorandum of understanding is agreed to by the Authority and the recipient of the award memorializing the terms and conditions of the award. Such agreement or memorandum of understanding shall set forth any conditions for receipt of the award, any dates certain for the completion of certain acts by the recipient, and provisions for the repayment of any award, including the rate of interest to be charged if any, if the recipient does not meet the terms of the agreement. In the event that an award is to be made over a multi-year period, the performance agreement or memorandum of understanding shall establish certain benchmarks or performance standards against which to measure the interim success of the project before additional funds are disbursed from the Fund.

G. 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, a statement concerning how the approved proposals further the goals of the Commonwealth Research and Technology Strategic Roadmap, and an assessment of the effectiveness of the Fund.

H. Administrative expenses related to implementing the guidelines and review process may be reimbursed from the Fund.

§ 23.1-1303. Governing boards; duties.

A. For purposes of this section, "intellectual property" means (i) a potentially patentable machine, article of manufacture, composition of matter, process, or improvement in any of those; (ii) an issued patent; (iii) a legal right that inheres in a patent; or (iv) anything that is copyrightable.

B. The governing board of each public institution of higher education shall:

1. Adopt and post conspicuously on its website bylaws for its own governance, including provisions that (i) establish the requirement of transparency, to the extent required by law, in all board actions; (ii)

describe the board's obligations under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), as set forth in subdivision B 10 of § 23.1-1301, including the requirements that (a) the board record minutes of each open meeting and post the minutes on the board's website, in accordance with subsection I of § 2.2-3707 and § 2.2-3707.1, (b) discussions and actions on any topic not specifically exempted by § 2.2-3711 be held in an open meeting, (c) the board give public notice of all meetings, in accordance with subsection C of § 2.2-3707, and (d) any action taken in a closed meeting be approved in an open meeting before it can have any force or effect, in accordance with subsection B of § 2.2-3711; and (iii) require that the board invite the Attorney General's appointee or representative to all meetings of the board, executive committee, and board committees;

2. Establish regulations or institution policies for the acceptance and assistance of students that include provisions (i) that specify that individuals who have knowingly and willfully failed to meet the federal requirement to register for the selective service are not eligible to receive any state direct student assistance, (ii) that specify that the accreditation status of a public high school in the Commonwealth shall not be considered in making admissions determinations for students who have earned a diploma pursuant to the requirements established by the Board of Education, and (iii) relating to the admission of certain graduates of comprehensive community colleges as set forth in § 23.1-907;

3. Assist the Council in enforcing the provisions relating to eligibility for financial aid;

4. Notwithstanding any other provision of state law, establish policies and procedures requiring the notification of the parent of a dependent student when such student receives mental health treatment at the institution's student health or counseling center and such treatment becomes part of the student's educational record in accordance with the federal Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.) and may be disclosed without prior consent as authorized by the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) and related regulations (34 C.F.R. Part 99). Such notification shall only be required if it is determined that there exists a substantial likelihood that, as a result of mental illness the student will, in the near future, (i) cause serious physical harm to himself or others as evidenced by recent behavior or any other relevant information or (ii) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs. However, notification may be withheld if any person licensed to diagnose and treat mental, emotional, or behavioral disorders by a health regulatory board within the Department of Health Professions who is treating the student has made a part of the student's record a written statement that, in the exercise of his professional judgment, the notification would be reasonably likely to cause substantial harm to the student or another person. No public institution of higher education or employee of a public institution of higher education making a disclosure pursuant to this subsection is civilly liable for any harm resulting from such disclosure unless such disclosure constitutes gross negligence or willful misconduct by the institution or its employees;

5. Establish policies and procedures requiring the release of the educational record of a dependent student, as defined by the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g), to a parent at his request;

6. Establish programs to seek to ensure that all graduates have the technology skills necessary to compete in the twenty-first century and that all students matriculating in teacher-training programs receive instruction in the effective use of educational technology;

7. Establish policies for the discipline of students who participate in varsity intercollegiate athletics, including a provision requiring an annual report by the administration of the institution to the governing board regarding enforcement actions taken pursuant to such policies;

8. In addition to all meetings prescribed in Chapters 14 (§ 23.1-1400 et seq.) through 29 (§ 23.1-2900 et seq.), meet with the chief executive officer of the institution at least once annually, in a closed meeting pursuant to subdivision A 1 of § 2.2-3711 and deliver an evaluation of the chief executive officer's performance. Any change to the chief executive officer's employment contract during any such meeting or any other meeting of the board shall be made only by a vote of the majority of the board's members;

9. If human research, as defined in § 32.1-162.16, is conducted at the institution, adopt regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) to effectuate the provisions of Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 for human research. Such regulations shall require the human research committee to submit to the Governor, the General Assembly, and the chief executive officer of the institution or his designee at least annually a report on the human research projects reviewed and approved by the committee and require the committee to report any significant deviations from approved proposals;

10. Submit the annual financial statements for the fiscal year ending the preceding June 30 and the accounts and status of any ongoing capital projects to the Auditor of Public Accounts for the audit of such statements pursuant to § 30-133;

11. *No later than December 1 of each year, report to the Council (i) the value of investments as reflected on the Statement of Net Position as of June 30 of the previous fiscal year, excluding any funds derived from endowment donations, endowment income, or other private philanthropy; (ii) the cash earnings on such balances in the previous fiscal year; and (iii) the use of the cash earnings on such*

balances. In the event that the commitment of any such investment earnings spans more than one fiscal year, the report shall reflect the commitments made in each future fiscal year. The reports of the Boards of Visitors of Virginia Commonwealth University and the University of Virginia shall exclude the value of and earnings on any investments held by the Virginia Commonwealth University Health System Authority and the University of Virginia Medical Center, respectively. As used in this subdivision, "investments" includes all short-term, long-term, liquid, and illiquid Statement of Net Position accounts, and subaccounts thereof, in which moneys have been invested in securities.

12. Submit to the General Assembly and the Governor an annual executive summary of its interim activity and work no later than the first day of each regular session of the General Assembly. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website;

~~12.~~ 13. Make available to any interested party upon request a copy of the portion of the most recent report of the Uniform Crime Reporting Section of the Department of State Police entitled "Crime in Virginia" pertaining to institutions of higher education;

~~13.~~ 14. Adopt policies or institution regulations regarding the ownership, protection, assignment, and use of intellectual property and provide a copy of such policies to the Governor and the Joint Commission on Technology and Science. All employees, including student employees, of public institutions of higher education are bound by the intellectual property policies of the institution employing them; and

~~14.~~ 15. Adopt policies that are supportive of the intellectual property rights of matriculated students who are not employed by such institution.