

CHAPTER 441

An Act to amend and reenact §§ 2.2-2233.1 and 23-4.3 of the Code of Virginia, relating to boards of visitors of state-supported institutions of higher education; student intellectual property rights.

[H 1230]

Approved March 11, 2016

Be it enacted by the General Assembly of Virginia:

- 1. That §§ 2.2-2233.1 and 23-4.3 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 *subsection A of § 23-4.3* 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.

§ 23-4.3. Adoption of intellectual property policies; employees to be bound by such policies.

A. The boards of visitors of state-supported institutions of higher education and the State Board for Community Colleges shall adopt policies regarding the ownership, protection, assignment, and use of intellectual property.

B. All employees, *including student employees*, of state-supported institutions of higher education, including the Virginia Community College System, as a condition of employment, shall be bound by the intellectual property policies of the institution employing them.

C. Upon adoption *of policies pursuant to subsection A*, the boards of visitors of state-supported institutions of higher education, including the State Board for Community Colleges, shall provide a copy of their intellectual property policies to the Governor and the Joint Commission on Technology and Science.

D. *The boards of visitors of state-supported institutions of higher education shall adopt policies that are supportive of the intellectual property rights of matriculated students who are not employed by such institution.*

E. 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.