

1-1 By: J. Davis of Harris, Reynolds H.B. No. 2457
1-2 (Senate Sponsor - Jackson)
1-3 (In the Senate - Received from the House April 26, 2011;
1-4 April 29, 2011, read first time and referred to Committee on
1-5 Economic Development; May 11, 2011, reported adversely, with
1-6 favorable Committee Substitute by the following vote: Yeas 6,
1-7 Nays 0; May 11, 2011, sent to printer.)

1-8 COMMITTEE SUBSTITUTE FOR H.B. No. 2457 By: Jackson

1-9 A BILL TO BE ENTITLED
1-10 AN ACT

1-11 relating to the Texas Enterprise Fund and the Texas emerging
1-12 technology fund.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Section 481.078, Government Code, is amended by
1-15 amending Subsection (e) and adding Subsections (f-1) and (h-1) to
1-16 read as follows:

1-17 (e) The administration of the fund is considered to be a
1-18 trusted program within the office of the governor. The governor
1-19 may negotiate on behalf of the state regarding awarding, by grant,
1-20 money appropriated from the fund. The governor may award money
1-21 appropriated from the fund only with the ~~[express written]~~ prior
1-22 approval of the lieutenant governor and speaker of the house of
1-23 representatives. For purposes of this subsection, an award of
1-24 money appropriated from the fund is considered disapproved by the
1-25 lieutenant governor or speaker of the house of representatives if
1-26 that officer does not approve the proposal to award the grant before
1-27 the 91st day after the date of receipt of the proposal from the
1-28 governor. The lieutenant governor or the speaker of the house of
1-29 representatives may extend the review deadline applicable to that
1-30 officer for an additional 14 days by submitting a written notice to
1-31 that effect to the governor before the expiration of the initial
1-32 review period.

1-33 (f-1) A grant agreement must contain a provision:

1-34 (1) requiring the creation of a minimum number of jobs
1-35 in this state; and

1-36 (2) specifying the date by which the recipient intends
1-37 to create those jobs.

1-38 (h-1) At least 14 days before the date the governor intends
1-39 to amend a grant agreement, the governor shall notify and provide a
1-40 copy of the proposed amendment to the speaker of the house of
1-41 representatives, the lieutenant governor, and the presiding
1-42 officers of the standing committees of both houses of the
1-43 legislature with primary jurisdiction over economic development.

1-44 SECTION 2. Section 490.001(4), Government Code, is amended
1-45 to read as follows:

1-46 (4) "Award" means:

1-47 (A) for purposes of Subchapter D, an investment
1-48 in the form of equity or a convertible note;

1-49 (B) for purposes of Subchapter E, an investment
1-50 in the form of a debt instrument;

1-51 (C) for purposes of Subchapter F or J, a grant; or

1-52 (D) other forms of contribution or investment as
1-53 recommended by the committee and approved by the governor,
1-54 lieutenant governor, and speaker of the house of representatives.

1-55 SECTION 3. Sections 490.005(a) and (b), Government Code,
1-56 are amended to read as follows:

1-57 (a) Not later than January 1 of each year, the governor
1-58 shall submit to the lieutenant governor, the speaker of the house of
1-59 representatives, and the standing committee of each house of the
1-60 legislature with primary jurisdiction over economic development
1-61 matters and post on the office of the governor's Internet website a
1-62 report that includes the following information regarding awards
1-63 made under the fund during each ~~[for the]~~ preceding ~~[three]~~ state

2-1 fiscal year [~~years~~]:

2-2 (1) the total number and amount of awards made;

2-3 (2) the number and amount of awards made under

2-4 Subchapters D, E, [~~and~~] F, and J;

2-5 (3) the aggregate total of private sector investment,

2-6 federal government funding, and contributions from other sources

2-7 obtained in connection with awards made under each of the

2-8 subchapters listed in Subdivision (2);

2-9 (4) the name of each award recipient and the amount of

2-10 the award made to the recipient; and

2-11 (5) a brief description of the equity position that

2-12 the governor, on behalf of the state, may take in companies

2-13 receiving awards and the names of the companies in which the state

2-14 has taken an equity position.

2-15 (b) The annual report must also contain:

2-16 (1) the total number of jobs actually created by each

2-17 project receiving funding under this chapter;

2-18 (2) an analysis of the number of jobs actually created

2-19 by each project receiving funding under this chapter; and

2-20 (3) a brief description regarding:

2-21 (A) the methodology used to determine the

2-22 information provided under Subdivisions (1) and (2), which may be

2-23 developed in consultation with the comptroller's and state

2-24 auditor's offices;

2-25 (B) [~~(1)~~] the intended outcomes of projects

2-26 funded under Subchapter D during the preceding two state fiscal

2-27 years; and

2-28 (C) [~~(2)~~] the actual outcomes of all projects

2-29 funded under Subchapter D during the fund's existence, including

2-30 any financial impact on the state resulting from a liquidity event

2-31 involving a company whose project was funded under that subchapter.

2-32 SECTION 4. Subchapter A, Chapter 490, Government Code, is

2-33 amended by adding Section 490.006 to read as follows:

2-34 Sec. 490.006. VALUATION OF INVESTMENTS; INCLUSION IN ANNUAL

2-35 REPORT. The office of the governor shall annually perform a

2-36 valuation of the equity positions taken by the governor, on behalf

2-37 of the state, in companies receiving awards under the fund and of

2-38 other investments made by the governor, on behalf of the state, in

2-39 connection with an award under the fund. The valuation must:

2-40 (1) be based on a methodology that:

2-41 (A) may be developed in consultation with the

2-42 comptroller's and state auditor's offices; and

2-43 (B) is consistent with generally accepted

2-44 accounting principles; and

2-45 (2) be included with the annual report required under

2-46 Section 490.005.

2-47 SECTION 5. The heading to Section 490.052, Government Code,

2-48 is amended to read as follows:

2-49 Sec. 490.052. APPOINTMENT TO COMMITTEE [~~BY GOVERNOR~~];

2-50 NOMINATIONS.

2-51 SECTION 6. Section 490.052, Government Code, is amended by

2-52 amending Subsection (a) and adding Subsections (a-1) and (a-2) to

2-53 read as follows:

2-54 (a) The governor shall appoint to the committee 13

2-55 individuals nominated as provided by Subsection (b).

2-56 (a-1) The lieutenant governor shall appoint two senators to

2-57 the committee.

2-58 (a-2) The speaker of the house of representatives shall

2-59 appoint two members of the house of representatives to the

2-60 committee.

2-61 SECTION 7. Subchapter B, Chapter 490, Government Code, is

2-62 amended by adding Section 490.0521 to read as follows:

2-63 Sec. 490.0521. FINANCIAL STATEMENT REQUIRED. Each member

2-64 of the committee shall file with the office of the governor a

2-65 verified financial statement complying with Sections 572.022

2-66 through 572.0252 as is required of a state officer by Section

2-67 572.021.

2-68 SECTION 8. Section 490.054, Government Code, is amended to

2-69 read as follows:

3-1 Sec. 490.054. TERMS. (a) Members of the committee
3-2 appointed by the governor serve staggered two-year terms, subject
3-3 to the pleasure of the governor.

3-4 (b) Members of the committee appointed by the lieutenant
3-5 governor or the speaker of the house of representatives serve
3-6 two-year terms.

3-7 SECTION 9. Section 490.056, Government Code, is amended by
3-8 adding Subsections (c), (d), and (e) to read as follows:

3-9 (c) Each entity recommended by the committee for an award of
3-10 money from the fund as provided by this chapter shall obtain and
3-11 provide the following information to the office of the governor:

3-12 (1) a federal criminal history background check for
3-13 each principal of the entity;

3-14 (2) a state criminal history background check for each
3-15 principal of the entity;

3-16 (3) a credit check for each principal of the entity;

3-17 (4) a copy of a government-issued form of photo
3-18 identification for each principal of the entity; and

3-19 (5) information regarding whether the entity or a
3-20 principal of the entity has ever been subject to a sanction imposed
3-21 by the Securities and Exchange Commission for a violation of
3-22 applicable federal law.

3-23 (d) For purposes of Subsection (c), "principal" means:

3-24 (1) an officer of an entity; or

3-25 (2) a person who has at least a 10 percent ownership
3-26 interest in an entity.

3-27 (e) With each proposal to award funding submitted by the
3-28 governor to the lieutenant governor and speaker of the house of
3-29 representatives for purposes of obtaining prior approval, the
3-30 governor shall provide each officer with a copy of the information
3-31 provided by the appropriate entity under Subsection (c).

3-32 SECTION 10. Section 490.057, Government Code, is amended to
3-33 read as follows:

3-34 Sec. 490.057. CONFIDENTIALITY. (a) Except as provided by
3-35 Subsection (b), information [~~information~~] collected by the
3-36 governor's office, the committee, or the committee's advisory
3-37 panels concerning the identity, background, finance, marketing
3-38 plans, trade secrets, or other commercially or academically
3-39 sensitive information of an individual or entity being considered
3-40 for, receiving, or having received an award from the fund is
3-41 confidential unless the individual or entity consents to disclosure
3-42 of the information.

3-43 (b) The following information collected by the governor's
3-44 office, the committee, or the committee's advisory panels under
3-45 this chapter is public information and may be disclosed under
3-46 Chapter 552:

3-47 (1) the name and address of an individual or entity
3-48 being considered for, receiving, or having received an award from
3-49 the fund;

3-50 (2) the amount of funding:

3-51 (A) applied for by an individual or entity being
3-52 considered for an award; or

3-53 (B) received by an award recipient;

3-54 (3) a brief description of the project that is the
3-55 subject of an application for funding or that is funded under this
3-56 chapter;

3-57 (4) if applicable, a brief description of the equity
3-58 position that the governor, on behalf of the state, has taken in an
3-59 entity that has received an award from the fund; and

3-60 (5) any other information designated by the committee
3-61 with the consent of:

3-62 (A) the individual or entity being considered
3-63 for, receiving, or having received an award from the fund, as
3-64 applicable;

3-65 (B) the governor;

3-66 (C) the lieutenant governor; and

3-67 (D) the speaker of the house of representatives.

3-68 SECTION 11. Section 490.101, Government Code, is amended by
3-69 amending Subsection (f) and adding Subsection (f-1) to read as

4-1 follows:

4-2 (f) The administration of the fund is considered to be a
4-3 trustee program within the office of the governor. The governor
4-4 may negotiate on behalf of the state regarding awards from the
4-5 fund. The governor may award money appropriated from the fund only
4-6 with the ~~[express written]~~ prior approval of the lieutenant
4-7 governor and speaker of the house of representatives.

4-8 (f-1) For purposes of Subsection (f), an award of money
4-9 appropriated from the fund is considered disapproved by the
4-10 lieutenant governor or speaker of the house of representatives if
4-11 that officer does not approve the proposal to award funding before
4-12 the 91st day after the date of receipt of the proposal from the
4-13 governor. The lieutenant governor or the speaker of the house of
4-14 representatives may extend the review deadline applicable to that
4-15 officer for an additional 14 days by submitting a written notice to
4-16 that effect to the governor before the expiration of the initial
4-17 review period.

4-18 SECTION 12. Section 490.102, Government Code, is amended by
4-19 amending Subsection (a) and adding Subsection (c) to read as
4-20 follows:

4-21 (a) Subject to Subsection (c), money ~~[Money]~~ appropriated
4-22 to the fund by the legislature, less amounts necessary to
4-23 administer the fund under Section 490.055, shall be allocated as
4-24 follows:

4-25 (1) 50 percent of the money for incentives for
4-26 collaboration between certain entities as provided by Subchapter D;

4-27 (2) 16.67 percent of the money for research award
4-28 matching as provided by Subchapter E; and

4-29 (3) 33.33 percent of the money for acquisition of
4-30 research superiority as provided by Subchapter F.

4-31 (c) Each state fiscal biennium, \$2 million deposited to the
4-32 fund must be allocated for making awards under this chapter to
4-33 companies that generate \$250,000 or less in annual gross revenue.

4-34 SECTION 13. Subchapter D, Chapter 490, Government Code, is
4-35 amended by adding Section 490.1521 to read as follows:

4-36 Sec. 490.1521. MINUTES OF CERTAIN MEETINGS. (a) Each
4-37 regional center of innovation and commercialization established
4-38 under Section 490.152, including the Texas Life Science Center for
4-39 Innovation and Commercialization, shall keep minutes of each
4-40 meeting at which applications for funding under this subchapter are
4-41 evaluated. The minutes must:

4-42 (1) include the name of each applicant recommended by
4-43 the regional center of innovation and commercialization to the
4-44 committee for funding; and

4-45 (2) indicate the vote of each member of the governing
4-46 body of the regional center of innovation and commercialization,
4-47 including any recusal by a member and the member's reason for
4-48 recusal, with regard to each application reviewed.

4-49 (b) Each regional center of innovation and
4-50 commercialization shall retain a copy of the minutes of each
4-51 meeting to which this section applies for at least three years.

4-52 SECTION 14. Chapter 490, Government Code, is amended by
4-53 adding Subchapter J to read as follows:

4-54 SUBCHAPTER J. STRATEGIC RESEARCH INITIATIVE PROGRAMS

4-55 Sec. 490.451. USE OF MONEY FOR STRATEGIC RESEARCH
4-56 INITIATIVE PROGRAMS. (a) Notwithstanding Section 490.102, the
4-57 governor may allocate money appropriated to the fund by the
4-58 legislature to provide grants to public or private institutions of
4-59 higher education in this state for the creation of strategic
4-60 research initiative programs as provided by this subchapter.

4-61 (b) The committee shall recommend proposals eligible for
4-62 funding under this section to the governor, lieutenant governor,
4-63 and speaker of the house of representatives.

4-64 (c) The amount allocated for funding proposals under this
4-65 subchapter may not exceed \$2 million in any state fiscal biennium.

4-66 Sec. 490.452. PURPOSE. In recommending proposals for
4-67 funding, the committee shall give specific emphasis to programs
4-68 designed to provide financial assistance to enable professors,
4-69 researchers, and other employees of public or private institutions

5-1 of higher education to obtain an increased amount of federal grant
 5-2 money for research in this state.

5-3 Sec. 490.453. PRIORITY FOR FUNDING. In funding proposals
 5-4 under this subchapter, priority shall be given to proposals that
 5-5 strengthen this state's competitiveness in obtaining federal grant
 5-6 money for research by:

5-7 (1) creating programs designed for and intended to
 5-8 achieve this purpose;

5-9 (2) funding travel for professors, researchers, and
 5-10 other employees of public or private institutions of higher
 5-11 education in this state; and

5-12 (3) allowing public or private institutions of higher
 5-13 education in this state to engage in innovative efforts to achieve
 5-14 this purpose.

5-15 Sec. 490.454. GUARANTEE OF ACTION BY PARTICIPATING ENTITY.

5-16 (a) An institution of higher education participating in a
 5-17 strategic research initiative program that receives funding under
 5-18 this subchapter shall guarantee by contract with the governor's
 5-19 office that the institution will perform specific actions expected
 5-20 to provide benefits to this state.

5-21 (b) If an institution of higher education fails to perform
 5-22 an action guaranteed by contract under Subsection (a) before a time
 5-23 specified by the contract, the institution shall return to the fund
 5-24 the grant money received by the institution under this subchapter.

5-25 Sec. 490.455. AUTHORIZED EXPENSES. Money awarded from the
 5-26 fund under this subchapter may be used for authorized expenses,
 5-27 including salaries and benefits, travel, consumable supplies,
 5-28 other operating expenses, capital equipment, construction or
 5-29 renovation of state or private facilities, and workforce training.

5-30 SECTION 15. Section 203.021, Labor Code, is amended by
 5-31 adding Subsection (e) to read as follows:

5-32 (e) Money in the compensation fund may not be transferred to
 5-33 the:

5-34 (1) Texas Enterprise Fund created under Section
 5-35 481.078, Government Code; or

5-36 (2) Texas emerging technology fund established under
 5-37 Section 490.101, Government Code.

5-38 SECTION 16. Section 204.123, Labor Code, is amended to read
 5-39 as follows:

5-40 Sec. 204.123. TRANSFER TO [~~TEXAS ENTERPRISE FUND,~~] SKILLS
 5-41 DEVELOPMENT FUND, TRAINING STABILIZATION FUND, AND COMPENSATION
 5-42 FUND. (a) If, on September 1 of a year, the commission determines
 5-43 that the amount in the compensation fund will exceed 100 percent of
 5-44 its floor as computed under Section 204.061 on the next October 1
 5-45 computation date, the commission shall transfer from the holding
 5-46 fund created under Section 204.122:

5-47 (1) [~~from the first \$160 million deposited in the~~
 5-48 ~~holding fund in any state fiscal biennium:~~

5-49 [~~(A) during the state fiscal biennium ending~~
 5-50 ~~August 31, 2007:~~

5-51 [~~(i) 67 percent to the Texas Enterprise~~
 5-52 ~~Fund created under Section 481.078, Government Code, except that~~
 5-53 ~~the amount transferred under this paragraph may not exceed the~~
 5-54 ~~amount appropriated by the legislature to the Texas Enterprise Fund~~
 5-55 ~~in that biennium; and~~

5-56 [~~(ii) 33 percent to the skills development~~
 5-57 ~~fund created under Section 303.003, except that the amount~~
 5-58 ~~transferred under this paragraph may not exceed the amount~~
 5-59 ~~appropriated by the legislature to the skills development program~~
 5-60 ~~strategies and activities in that biennium; and~~

5-61 [~~(B)~~] during any state fiscal biennium beginning
 5-62 on or after September 1, 2007, 100 [+]

5-63 [~~(i) 75 percent to the Texas Enterprise~~
 5-64 ~~Fund created under Section 481.078, Government Code, except that~~
 5-65 ~~the amount transferred under this paragraph may not exceed the~~
 5-66 ~~amount appropriated by the legislature to the Texas Enterprise Fund~~
 5-67 ~~in that biennium; and~~

5-68 [~~(ii) 25] percent to the skills development~~

5-69 fund created under Section 303.003, except that the amount

6-1 transferred under this subdivision [~~paragraph~~] may not exceed the
 6-2 amount appropriated by the legislature to the skills development
 6-3 program strategies and activities in that biennium; and

6-4 (2) any remaining amount in the holding fund after the
 6-5 distribution under Subdivision (1) to the training stabilization
 6-6 fund created under Section 302.101.

6-7 (b) If, on September 1 of a year, the commission determines
 6-8 that the amount in the compensation fund will be at or below 100
 6-9 percent of its floor as computed under Section 204.061 on the next
 6-10 October 1 computation date, the commission shall transfer to the
 6-11 compensation fund as much of the amount in the holding fund as is
 6-12 necessary to raise the amount in the compensation fund to 100
 6-13 percent of its floor, up to and including the entire amount in the
 6-14 holding fund. The commission shall transfer any remaining balance
 6-15 in the holding fund to the [~~Texas Enterprise Fund, the~~] skills
 6-16 development fund[~~7~~] and the training stabilization fund in the
 6-17 manner [~~in the percentages~~] prescribed by Subsection (a).

6-18 SECTION 17. Sections 302.101(b) and (c), Labor Code, are
 6-19 amended to read as follows:

6-20 (b) Money in the training stabilization fund may be used in
 6-21 a year in which the amounts in the employment and training
 6-22 investment holding fund are insufficient to meet the legislative
 6-23 appropriation for that fiscal year for [~~either the Texas Enterprise~~
 6-24 ~~Fund or~~] the skills development program strategies and activities.

6-25 (c) Money in the training stabilization fund shall be
 6-26 transferred to the [~~Texas Enterprise Fund and the~~] skills
 6-27 development fund under Subsection (b) not later than September
 6-28 30. [~~The transfer under Subsection (b) shall consist of~~
 6-29 ~~transferring 67 percent of the money in the training stabilization~~
 6-30 ~~fund to the Texas Enterprise Fund and 33 percent of the money in the~~
 6-31 ~~training stabilization fund to the skills development fund.] The
 6-32 amount transferred from the training stabilization fund may not
 6-33 exceed the amounts appropriated to the [~~Texas Enterprise Fund and~~]
 6-34 skills development program strategies and activities in the fiscal
 6-35 year in which the transfer is made.~~

6-36 SECTION 18. Sections 481.078(e) and 490.101(f), Government
 6-37 Code, as amended by this Act, and Section 490.101(f-1), Government
 6-38 Code, as added by this Act, apply only to a proposal for an award
 6-39 from the Texas Enterprise Fund or Texas emerging technology fund
 6-40 submitted by the governor to the lieutenant governor or speaker of
 6-41 the house of representatives for prior approval on or after the
 6-42 effective date of this Act. A proposal submitted by the governor
 6-43 for prior approval before the effective date of this Act is governed
 6-44 by the law in effect on the date the proposal was submitted for that
 6-45 approval, and the former law is continued in effect for that
 6-46 purpose.

6-47 SECTION 19. Section 481.078(f-1), Government Code, as added
 6-48 by this Act, applies only to a grant agreement that is entered into
 6-49 on or after the effective date of this Act. A grant agreement that
 6-50 is entered into before the effective date of this Act is governed by
 6-51 the law in effect on the date the agreement was entered into, and
 6-52 the former law is continued in effect for that purpose.

6-53 SECTION 20. (a) The terms of the members of the Texas
 6-54 Emerging Technology Advisory Committee serving immediately before
 6-55 the effective date of this Act expire September 1, 2011.

6-56 (b) As soon as practicable after this Act takes effect, the
 6-57 governor, lieutenant governor, and speaker of the house of
 6-58 representatives shall appoint members to the Texas Emerging
 6-59 Technology Advisory Committee established under Subchapter B,
 6-60 Chapter 490, Government Code, in a manner that complies with that
 6-61 subchapter, as amended by this Act.

6-62 (c) At the first meeting of members of the Texas Emerging
 6-63 Technology Advisory Committee established under Subchapter B,
 6-64 Chapter 490, Government Code, as amended by this Act, occurring on
 6-65 or after September 1, 2011, the members appointed by the governor
 6-66 shall draw lots to determine which six members will serve a term
 6-67 expiring September 1, 2012, and which seven members will serve a
 6-68 term expiring September 1, 2013.

6-69 SECTION 21. Section 490.102, Government Code, as amended by

7-1 this Act, applies only to an award from the Texas emerging
7-2 technology fund that is made on or after the effective date of this
7-3 Act. An award from the Texas emerging technology fund made before
7-4 the effective date of this Act is governed by the law in effect on
7-5 the date the award was made, and the former law is continued in
7-6 effect for that purpose.

7-7 SECTION 22. This Act takes effect September 1, 2011.

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