

By: Jackson

S.B. No. 1175

A BILL TO BE ENTITLED

AN ACT

relating to the Texas Enterprise Fund and the Texas emerging technology fund.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

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

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

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

3 (2) specifying the date by which the recipient intends
4 to create those jobs.

5 (h-1) At least 14 days before the date the governor intends
6 to amend a grant agreement, the governor shall notify and provide a
7 copy of the proposed amendment to the speaker of the house of
8 representatives, the lieutenant governor, and the presiding
9 officers of the standing committees of both houses of the
10 legislature with primary jurisdiction over economic development.

11 SECTION 2. Subdivision (4), Section 490.001, Government
12 Code, is amended to read as follows:

- 13 (4) "Award" means:
- 14 (A) for purposes of Subchapter D, an investment
- 15 in the form of equity or a convertible note;
- 16 (B) for purposes of Subchapter E, an investment
- 17 in the form of a debt instrument;
- 18 (C) for purposes of Subchapter F or J, a grant; or
- 19 (D) other forms of contribution or investment as
- 20 recommended by the committee and approved by the governor,
- 21 lieutenant governor, and speaker of the house of representatives.

22 SECTION 3. Subsections (a) and (b), Section 490.005,
23 Government Code, are amended to read as follows:

24 (a) Not later than January 1 of each year, the governor
25 shall submit to the lieutenant governor, the speaker of the house of
26 representatives, and the standing committee of each house of the
27 legislature with primary jurisdiction over economic development

1 matters and post on the office of the governor's Internet website a
2 report that includes the following information regarding awards
3 made under the fund during each [~~for the~~] preceding [~~three~~] state
4 fiscal year [~~years~~]:

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

6 (2) the number and amount of awards made under
7 Subchapters D, E, [~~and~~] F, and J;

8 (3) the aggregate total of private sector investment,
9 federal government funding, and contributions from other sources
10 obtained in connection with awards made under each of the
11 subchapters listed in Subdivision (2);

12 (4) the name of each award recipient and the amount of
13 the award made to the recipient; and

14 (5) a brief description of the equity position that
15 the governor, on behalf of the state, may take in companies
16 receiving awards and the names of the companies in which the state
17 has taken an equity position.

18 (b) The annual report must also contain:

19 (1) the total number of jobs actually created by each
20 project receiving funding under this chapter;

21 (2) an analysis of the number of jobs actually created
22 by each project receiving funding under this chapter; and

23 (3) a brief description regarding:

24 (A) the methodology used to determine the
25 information provided under Subdivisions (1) and (2), which may be
26 developed in consultation with the comptroller's and state
27 auditor's offices;

1 (B) [~~(1)~~] the intended outcomes of projects
2 funded under Subchapter D during the preceding two state fiscal
3 years; and

4 (C) [~~(2)~~] the actual outcomes of all projects
5 funded under Subchapter D during the fund's existence, including
6 any financial impact on the state resulting from a liquidity event
7 involving a company whose project was funded under that subchapter.

8 SECTION 4. Subchapter A, Chapter 490, Government Code, is
9 amended by adding Section 490.006 to read as follows:

10 Sec. 490.006. VALUATION OF INVESTMENTS; INCLUSION IN ANNUAL
11 REPORT. The office of the governor shall annually perform a
12 valuation of the equity positions taken by the governor, on behalf
13 of the state, in companies receiving awards under the fund and of
14 other investments made by the governor, on behalf of the state, in
15 connection with an award under the fund. The valuation must:

16 (1) be based on a methodology that:

17 (A) may be developed in consultation with the
18 comptroller's and state auditor's offices; and

19 (B) is consistent with generally accepted
20 accounting principles; and

21 (2) be included with the annual report required under
22 Section 490.005.

23 SECTION 5. The heading to Section 490.052, Government Code,
24 is amended to read as follows:

25 Sec. 490.052. APPOINTMENT TO COMMITTEE [~~BY GOVERNOR~~];
26 NOMINATIONS.

27 SECTION 6. Section 490.052, Government Code, is amended by

1 amending Subsection (a) and adding Subsections (a-1) and (a-2) to
2 read as follows:

3 (a) The governor shall appoint to the committee 13
4 individuals nominated as provided by Subsection (b).

5 (a-1) The lieutenant governor shall appoint two senators to
6 the committee.

7 (a-2) The speaker of the house of representatives shall
8 appoint two members of the house of representatives to the
9 committee.

10 SECTION 7. Subchapter B, Chapter 490, Government Code, is
11 amended by adding Section 490.0521 to read as follows:

12 Sec. 490.0521. FINANCIAL STATEMENT REQUIRED. Each member
13 of the committee shall file with the office of the governor a
14 verified financial statement complying with Sections
15 572.022-572.0252 as is required of a state officer by Section
16 572.021.

17 SECTION 8. Section 490.054, Government Code, is amended to
18 read as follows:

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

22 (b) Members of the committee appointed by the lieutenant
23 governor or the speaker of the house of representatives serve
24 two-year terms.

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

27 (c) Each entity recommended by the committee for an award of

1 money from the fund as provided by this chapter shall obtain and
2 provide the following information to the office of the governor:

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

5 (2) a state criminal history background check for each
6 principal of the entity;

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

8 (4) a copy of a government-issued form of photo
9 identification for each principal of the entity; and

10 (5) information regarding whether the entity or a
11 principal of the entity has ever been subject to a sanction imposed
12 by the Securities and Exchange Commission for a violation of
13 applicable federal law.

14 (d) For purposes of Subsection (c), "principal" means:

15 (1) an officer of an entity; or

16 (2) a person who has at least a 10 percent ownership
17 interest in an entity.

18 (e) With each proposal to award funding submitted by the
19 governor to the lieutenant governor and speaker of the house of
20 representatives for purposes of obtaining prior approval, the
21 governor shall provide each officer with a copy of the information
22 provided by the appropriate entity under Subsection (c).

23 SECTION 10. Section 490.057, Government Code, is amended to
24 read as follows:

25 Sec. 490.057. CONFIDENTIALITY. (a) Except as provided by
26 Subsection (b), information [~~Information~~] collected by the
27 governor's office, the committee, or the committee's advisory

1 panels concerning the identity, background, finance, marketing
2 plans, trade secrets, or other commercially or academically
3 sensitive information of an individual or entity being considered
4 for, receiving, or having received an award from the fund is
5 confidential unless the individual or entity consents to disclosure
6 of the information.

7 (b) The following information collected by the governor's
8 office, the committee, or the committee's advisory panels under
9 this chapter is public information and may be disclosed under
10 Chapter 552:

11 (1) the name and address of an individual or entity
12 being considered for, receiving, or having received an award from
13 the fund;

14 (2) the amount of funding:

15 (A) applied for by an individual or entity being
16 considered for an award; or

17 (B) received by an award recipient;

18 (3) a brief description of the project that is the
19 subject of an application for funding or that is funded under this
20 chapter;

21 (4) if applicable, a brief description of the equity
22 position that the governor, on behalf of the state, has taken in an
23 entity that has received an award from the fund; and

24 (5) any other information designated by the committee
25 with the consent of:

26 (A) the individual or entity being considered
27 for, receiving, or having received an award from the fund, as

1 applicable;

2 (B) the governor;

3 (C) the lieutenant governor; and

4 (D) the speaker of the house of representatives.

5 SECTION 11. Section 490.101, Government Code, is amended by
6 amending Subsection (f) and adding Subsection (f-1) to read as
7 follows:

8 (f) The administration of the fund is considered to be a
9 trustee program within the office of the governor. The governor
10 may negotiate on behalf of the state regarding awards from the
11 fund. The governor may award money appropriated from the fund only
12 with the [~~express written~~] prior approval of the lieutenant
13 governor and speaker of the house of representatives.

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

24 SECTION 12. Section 490.102, Government Code, is amended by
25 amending Subsection (a) and adding Subsection (c) to read as
26 follows:

27 (a) Subject to Subsection (c), money [~~Money~~] appropriated

1 to the fund by the legislature, less amounts necessary to
2 administer the fund under Section 490.055, shall be allocated as
3 follows:

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

6 (2) 16.67 percent of the money for research award
7 matching as provided by Subchapter E; and

8 (3) 33.33 percent of the money for acquisition of
9 research superiority as provided by Subchapter F.

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

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

15 Sec. 490.1521. MINUTES OF CERTAIN MEETINGS. (a) Each
16 regional center of innovation and commercialization established
17 under Section 490.152, including the Texas Life Science Center for
18 Innovation and Commercialization, shall keep minutes of each
19 meeting at which applications for funding under this subchapter are
20 evaluated. The minutes must:

21 (1) include the name of each applicant recommended by
22 the regional center of innovation and commercialization to the
23 committee for funding; and

24 (2) indicate the vote of each member of the governing
25 body of the regional center of innovation and commercialization,
26 including any recusal by a member and the member's reason for
27 recusal, with regard to each application reviewed.

1 (b) Each regional center of innovation and
2 commercialization shall retain a copy of the minutes of each
3 meeting to which this section applies for at least three years.

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

6 SUBCHAPTER J. STRATEGIC RESEARCH INITIATIVE PROGRAMS

7 Sec. 490.451. USE OF MONEY FOR STRATEGIC RESEARCH
8 INITIATIVE PROGRAMS. (a) Notwithstanding Section 490.102, the
9 governor may allocate money appropriated to the fund by the
10 legislature to provide grants to public or private institutions of
11 higher education in this state for the creation of strategic
12 research initiative programs as provided by this subchapter.

13 (b) The committee shall recommend proposals eligible for
14 funding under this section to the governor, lieutenant governor,
15 and speaker of the house of representatives.

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

18 Sec. 490.452. PURPOSE. In recommending proposals for
19 funding, the committee shall give specific emphasis to programs
20 designed to provide financial assistance to enable professors,
21 researchers, and other employees of public or private institutions
22 of higher education to obtain an increased amount of federal grant
23 money for research in this state.

24 Sec. 490.453. PRIORITY FOR FUNDING. In funding proposals
25 under this subchapter, priority shall be given to proposals that
26 strengthen this state's competitiveness in obtaining federal grant
27 money for research by:

1 (1) creating programs designed for and intended to
2 achieve this purpose;

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

6 (3) allowing public or private institutions of higher
7 education in this state to engage in innovative efforts to achieve
8 this purpose.

9 Sec. 490.454. GUARANTEE OF ACTION BY PARTICIPATING ENTITY.

10 (a) An institution of higher education participating in a
11 strategic research initiative program that receives funding under
12 this subchapter shall guarantee by contract with the governor's
13 office that the institution will perform specific actions expected
14 to provide benefits to this state.

15 (b) If an institution of higher education fails to perform
16 an action guaranteed by contract under Subsection (a) before a time
17 specified by the contract, the institution shall return to the fund
18 the grant money received by the institution under this subchapter.

19 Sec. 490.455. AUTHORIZED EXPENSES. Money awarded from the
20 fund under this subchapter may be used for authorized expenses,
21 including salaries and benefits, travel, consumable supplies,
22 other operating expenses, capital equipment, construction or
23 renovation of state or private facilities, and workforce training.

24 SECTION 15. Section 203.021, Labor Code, is amended by
25 adding Subsection (e) to read as follows:

26 (e) Money in the compensation fund may not be transferred to
27 the:

1 (1) Texas Enterprise Fund created under Section
2 481.078, Government Code; or

3 (2) Texas emerging technology fund established under
4 Section 490.101, Government Code.

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

7 Sec. 204.123. TRANSFER TO [~~TEXAS ENTERPRISE FUND,~~] SKILLS
8 DEVELOPMENT FUND, TRAINING STABILIZATION FUND, AND COMPENSATION
9 FUND. (a) If, on September 1 of a year, the commission determines
10 that the amount in the compensation fund will exceed 100 percent of
11 its floor as computed under Section 204.061 on the next October 1
12 computation date, the commission shall transfer from the holding
13 fund created under Section 204.122:

14 (1) [~~from the first \$160 million deposited in the~~
15 ~~holding fund in any state fiscal biennium:~~

16 [~~(A) during the state fiscal biennium ending~~
17 ~~August 31, 2007:~~

18 [~~(i) 67 percent to the Texas Enterprise~~
19 ~~Fund created under Section 481.078, Government Code, except that~~
20 ~~the amount transferred under this paragraph may not exceed the~~
21 ~~amount appropriated by the legislature to the Texas Enterprise Fund~~
22 ~~in that biennium, and~~

23 [~~(ii) 33 percent to the skills development~~
24 ~~fund created under Section 303.003, except that the amount~~
25 ~~transferred under this paragraph may not exceed the amount~~
26 ~~appropriated by the legislature to the skills development program~~
27 ~~strategies and activities in that biennium, and~~

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

3 [~~(i)~~ 75 percent to the Texas Enterprise
4 ~~Fund created under Section 481.078, Government Code, except that~~
5 ~~the amount transferred under this paragraph may not exceed the~~
6 ~~amount appropriated by the legislature to the Texas Enterprise Fund~~
7 ~~in that biennium; and~~

8 [~~(ii)~~ 25] percent to the skills development
9 fund created under Section 303.003, except that the amount
10 transferred under this subdivision [~~paragraph~~] may not exceed the
11 amount appropriated by the legislature to the skills development
12 program strategies and activities in that biennium; and

13 (2) any remaining amount in the holding fund after the
14 distribution under Subdivision (1) to the training stabilization
15 fund created under Section 302.101.

16 (b) If, on September 1 of a year, the commission determines
17 that the amount in the compensation fund will be at or below 100
18 percent of its floor as computed under Section 204.061 on the next
19 October 1 computation date, the commission shall transfer to the
20 compensation fund as much of the amount in the holding fund as is
21 necessary to raise the amount in the compensation fund to 100
22 percent of its floor, up to and including the entire amount in the
23 holding fund. The commission shall transfer any remaining balance
24 in the holding fund to the [~~Texas Enterprise Fund, the~~] skills
25 development fund~~[7]~~ and the training stabilization fund in the
26 manner [~~in the percentages~~] prescribed by Subsection (a).

27 SECTION 17. Subsections (b) and (c), Section 302.101, Labor

1 Code, are amended to read as follows:

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

7 (c) Money in the training stabilization fund shall be
8 transferred to the ~~[Texas Enterprise Fund and the]~~ skills
9 development fund under Subsection (b) not later than September
10 30. ~~[The transfer under Subsection (b) shall consist of~~
11 ~~transferring 67 percent of the money in the training stabilization~~
12 ~~fund to the Texas Enterprise Fund and 33 percent of the money in the~~
13 ~~training stabilization fund to the skills development fund.]~~ The
14 amount transferred from the training stabilization fund may not
15 exceed the amounts appropriated to the ~~[Texas Enterprise Fund and]~~
16 skills development program strategies and activities in the fiscal
17 year in which the transfer is made.

18 SECTION 18. Subsection (e), Section 481.078, and Subsection
19 (f), Section 490.101, Government Code, as amended by this Act, and
20 Subsection (f-1), Section 490.101, Government Code, as added by
21 this Act, apply only to a proposal for an award from the Texas
22 Enterprise Fund or Texas emerging technology fund submitted by the
23 governor to the lieutenant governor or speaker of the house of
24 representatives for prior approval on or after the effective date
25 of this Act. A proposal submitted by the governor for prior
26 approval before the effective date of this Act is governed by the
27 law in effect on the date the proposal was submitted for that

1 approval, and the former law is continued in effect for that
2 purpose.

3 SECTION 19. Subsection (f-1), Section 481.078, Government
4 Code, as added by this Act, applies only to a grant agreement that
5 is entered into on or after the effective date of this Act. A grant
6 agreement that is entered into before the effective date of this Act
7 is governed by the law in effect on the date the agreement was
8 entered into, and the former law is continued in effect for that
9 purpose.

10 SECTION 20. (a) The terms of the members of the Texas
11 Emerging Technology Advisory Committee serving immediately before
12 the effective date of this Act expire September 1, 2011.

13 (b) As soon as practicable after this Act takes effect, the
14 governor, lieutenant governor, and speaker of the house of
15 representatives shall appoint members to the Texas Emerging
16 Technology Advisory Committee established under Subchapter B,
17 Chapter 490, Government Code, in a manner that complies with that
18 subchapter, as amended by this Act.

19 (c) At the first meeting of members of the Texas Emerging
20 Technology Advisory Committee established under Subchapter B,
21 Chapter 490, Government Code, as amended by this Act, occurring on
22 or after September 1, 2011, the members appointed by the governor
23 shall draw lots to determine which six members will serve a term
24 expiring September 1, 2012, and which seven members will serve a
25 term expiring September 1, 2013.

26 SECTION 21. Section 490.102, Government Code, as amended by
27 this Act, applies only to an award from the Texas emerging

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

6 SECTION 22. This Act takes effect September 1, 2011.