

1-1 By: Jackson S.B. No. 1175  
1-2 (In the Senate - Filed March 4, 2011; March 16, 2011, read  
1-3 first time and referred to Committee on Economic Development;  
1-4 May 9, 2011, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 6, Nays 0; May 9, 2011, sent  
1-6 to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1175 By: Jackson

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the Texas Enterprise Fund and the Texas emerging  
1-11 technology fund.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 481.078, Government Code, is amended by  
1-14 amending Subsection (e) and adding Subsections (f-1) and (h-1) to  
1-15 read as follows:

1-16 (e) The administration of the fund is considered to be a  
1-17 trusted program within the office of the governor. The governor  
1-18 may negotiate on behalf of the state regarding awarding, by grant,  
1-19 money appropriated from the fund. The governor may award money  
1-20 appropriated from the fund only with the ~~[express written]~~ prior  
1-21 approval of the lieutenant governor and speaker of the house of  
1-22 representatives. For purposes of this subsection, an award of  
1-23 money appropriated from the fund is considered disapproved by the  
1-24 lieutenant governor or speaker of the house of representatives if  
1-25 that officer does not approve the proposal to award the grant before  
1-26 the 91st day after the date of receipt of the proposal from the  
1-27 governor. The lieutenant governor or the speaker of the house of  
1-28 representatives may extend the review deadline applicable to that  
1-29 officer for an additional 14 days by submitting a written notice to  
1-30 that effect to the governor before the expiration of the initial  
1-31 review period.

1-32 (f-1) A grant agreement must contain a provision:

1-33 (1) requiring the creation of a minimum number of jobs  
1-34 in this state; and

1-35 (2) specifying the date by which the recipient intends  
1-36 to create those jobs.

1-37 (h-1) At least 14 days before the date the governor intends  
1-38 to amend a grant agreement, the governor shall notify and provide a  
1-39 copy of the proposed amendment to the speaker of the house of  
1-40 representatives, the lieutenant governor, and the presiding  
1-41 officers of the standing committees of both houses of the  
1-42 legislature with primary jurisdiction over economic development.

1-43 SECTION 2. Subdivision (4), Section 490.001, Government  
1-44 Code, is amended to read as follows:

1-45 (4) "Award" means:

1-46 (A) for purposes of Subchapter D, an investment  
1-47 in the form of equity or a convertible note;

1-48 (B) for purposes of Subchapter E, an investment  
1-49 in the form of a debt instrument;

1-50 (C) for purposes of Subchapter F or J, a grant; or

1-51 (D) other forms of contribution or investment as  
1-52 recommended by the committee and approved by the governor,  
1-53 lieutenant governor, and speaker of the house of representatives.

1-54 SECTION 3. Subsections (a) and (b), Section 490.005,  
1-55 Government Code, are amended to read as follows:

1-56 (a) Not later than January 1 of each year, the governor  
1-57 shall submit to the lieutenant governor, the speaker of the house of  
1-58 representatives, and the standing committee of each house of the  
1-59 legislature with primary jurisdiction over economic development  
1-60 matters and post on the office of the governor's Internet website a  
1-61 report that includes the following information regarding awards  
1-62 made under the fund during each ~~[for the]~~ preceding ~~[three]~~ state  
1-63 fiscal year ~~[years]~~:

- 2-1 (1) the total number and amount of awards made;
- 2-2 (2) the number and amount of awards made under
- 2-3 Subchapters D, E, ~~and~~ F, and J;
- 2-4 (3) the aggregate total of private sector investment,
- 2-5 federal government funding, and contributions from other sources
- 2-6 obtained in connection with awards made under each of the
- 2-7 subchapters listed in Subdivision (2);
- 2-8 (4) the name of each award recipient and the amount of
- 2-9 the award made to the recipient; and
- 2-10 (5) a brief description of the equity position that
- 2-11 the governor, on behalf of the state, may take in companies
- 2-12 receiving awards and the names of the companies in which the state
- 2-13 has taken an equity position.

(b) The annual report must also contain:

- 2-15 (1) the total number of jobs actually created by each
- 2-16 project receiving funding under this chapter;
- 2-17 (2) an analysis of the number of jobs actually created
- 2-18 by each project receiving funding under this chapter; and

(3) a brief description regarding:

2-20 (A) the methodology used to determine the  
2-21 information provided under Subdivisions (1) and (2), which may be  
2-22 developed in consultation with the comptroller's and state  
2-23 auditor's offices;

2-24 (B) ~~(1)~~ the intended outcomes of projects  
2-25 funded under Subchapter D during the preceding two state fiscal  
2-26 years; and

2-27 (C) ~~(2)~~ the actual outcomes of all projects  
2-28 funded under Subchapter D during the fund's existence, including  
2-29 any financial impact on the state resulting from a liquidity event  
2-30 involving a company whose project was funded under that subchapter.

2-31 SECTION 4. Subchapter A, Chapter 490, Government Code, is  
2-32 amended by adding Section 490.006 to read as follows:

2-33 Sec. 490.006. VALUATION OF INVESTMENTS; INCLUSION IN ANNUAL  
2-34 REPORT. The office of the governor shall annually perform a  
2-35 valuation of the equity positions taken by the governor, on behalf  
2-36 of the state, in companies receiving awards under the fund and of  
2-37 other investments made by the governor, on behalf of the state, in  
2-38 connection with an award under the fund. The valuation must:

2-39 (1) be based on a methodology that:

2-40 (A) may be developed in consultation with the  
2-41 comptroller's and state auditor's offices; and

2-42 (B) is consistent with generally accepted  
2-43 accounting principles; and

2-44 (2) be included with the annual report required under  
2-45 Section 490.005.

2-46 SECTION 5. The heading to Section 490.052, Government Code,  
2-47 is amended to read as follows:

2-48 Sec. 490.052. APPOINTMENT TO COMMITTEE ~~[BY GOVERNOR];~~  
2-49 NOMINATIONS.

2-50 SECTION 6. Section 490.052, Government Code, is amended by  
2-51 amending Subsection (a) and adding Subsections (a-1) and (a-2) to  
2-52 read as follows:

2-53 (a) The governor shall appoint to the committee 13  
2-54 individuals nominated as provided by Subsection (b).

2-55 (a-1) The lieutenant governor shall appoint two senators to  
2-56 the committee.

2-57 (a-2) The speaker of the house of representatives shall  
2-58 appoint two members of the house of representatives to the  
2-59 committee.

2-60 SECTION 7. Subchapter B, Chapter 490, Government Code, is  
2-61 amended by adding Section 490.0521 to read as follows:

2-62 Sec. 490.0521. FINANCIAL STATEMENT REQUIRED. Each member  
2-63 of the committee shall file with the office of the governor a  
2-64 verified financial statement complying with Sections  
2-65 572.022-572.0252 as is required of a state officer by Section  
2-66 572.021.

2-67 SECTION 8. Section 490.054, Government Code, is amended to  
2-68 read as follows:

2-69 Sec. 490.054. TERMS. (a) Members of the committee

3-1 appointed by the governor serve staggered two-year terms, subject  
 3-2 to the pleasure of the governor.

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

3-6 SECTION 9. Section 490.056, Government Code, is amended by  
 3-7 adding Subsections (c), (d), and (e) to read as follows:

3-8 (c) Each entity recommended by the committee for an award of  
 3-9 money from the fund as provided by this chapter shall obtain and  
 3-10 provide the following information to the office of the governor:

3-11 (1) a federal criminal history background check for  
 3-12 each principal of the entity;

3-13 (2) a state criminal history background check for each  
 3-14 principal of the entity;

3-15 (3) a credit check for each principal of the entity;

3-16 (4) a copy of a government-issued form of photo  
 3-17 identification for each principal of the entity; and

3-18 (5) information regarding whether the entity or a  
 3-19 principal of the entity has ever been subject to a sanction imposed  
 3-20 by the Securities and Exchange Commission for a violation of  
 3-21 applicable federal law.

3-22 (d) For purposes of Subsection (c), "principal" means:

3-23 (1) an officer of an entity; or

3-24 (2) a person who has at least a 10 percent ownership  
 3-25 interest in an entity.

3-26 (e) With each proposal to award funding submitted by the  
 3-27 governor to the lieutenant governor and speaker of the house of  
 3-28 representatives for purposes of obtaining prior approval, the  
 3-29 governor shall provide each officer with a copy of the information  
 3-30 provided by the appropriate entity under Subsection (c).

3-31 SECTION 10. Section 490.057, Government Code, is amended to  
 3-32 read as follows:

3-33 Sec. 490.057. CONFIDENTIALITY. (a) Except as provided by  
 3-34 Subsection (b), information [~~information~~] collected by the  
 3-35 governor's office, the committee, or the committee's advisory  
 3-36 panels concerning the identity, background, finance, marketing  
 3-37 plans, trade secrets, or other commercially or academically  
 3-38 sensitive information of an individual or entity being considered  
 3-39 for, receiving, or having received an award from the fund is  
 3-40 confidential unless the individual or entity consents to disclosure  
 3-41 of the information.

3-42 (b) The following information collected by the governor's  
 3-43 office, the committee, or the committee's advisory panels under  
 3-44 this chapter is public information and may be disclosed under  
 3-45 Chapter 552:

3-46 (1) the name and address of an individual or entity  
 3-47 being considered for, receiving, or having received an award from  
 3-48 the fund;

3-49 (2) the amount of funding:

3-50 (A) applied for by an individual or entity being  
 3-51 considered for an award; or

3-52 (B) received by an award recipient;

3-53 (3) a brief description of the project that is the  
 3-54 subject of an application for funding or that is funded under this  
 3-55 chapter;

3-56 (4) if applicable, a brief description of the equity  
 3-57 position that the governor, on behalf of the state, has taken in an  
 3-58 entity that has received an award from the fund; and

3-59 (5) any other information designated by the committee  
 3-60 with the consent of:

3-61 (A) the individual or entity being considered  
 3-62 for, receiving, or having received an award from the fund, as  
 3-63 applicable;

3-64 (B) the governor;

3-65 (C) the lieutenant governor; and

3-66 (D) the speaker of the house of representatives.

3-67 SECTION 11. Section 490.101, Government Code, is amended by  
 3-68 amending Subsection (f) and adding Subsection (f-1) to read as  
 3-69 follows:

4-1 (f) The administration of the fund is considered to be a  
 4-2 trustee program within the office of the governor. The governor  
 4-3 may negotiate on behalf of the state regarding awards from the  
 4-4 fund. The governor may award money appropriated from the fund only  
 4-5 with the ~~[express written]~~ prior approval of the lieutenant  
 4-6 governor and speaker of the house of representatives.

4-7 (f-1) For purposes of Subsection (f), an award of money  
 4-8 appropriated from the fund is considered disapproved by the  
 4-9 lieutenant governor or speaker of the house of representatives if  
 4-10 that officer does not approve the proposal to award funding before  
 4-11 the 91st day after the date of receipt of the proposal from the  
 4-12 governor. The lieutenant governor or the speaker of the house of  
 4-13 representatives may extend the review deadline applicable to that  
 4-14 officer for an additional 14 days by submitting a written notice to  
 4-15 that effect to the governor before the expiration of the initial  
 4-16 review period.

4-17 SECTION 12. Section 490.102, Government Code, is amended by  
 4-18 amending Subsection (a) and adding Subsection (c) to read as  
 4-19 follows:

4-20 (a) Subject to Subsection (c), money [Money] appropriated  
 4-21 to the fund by the legislature, less amounts necessary to  
 4-22 administer the fund under Section 490.055, shall be allocated as  
 4-23 follows:

4-24 (1) 50 percent of the money for incentives for  
 4-25 collaboration between certain entities as provided by Subchapter D;

4-26 (2) 16.67 percent of the money for research award  
 4-27 matching as provided by Subchapter E; and

4-28 (3) 33.33 percent of the money for acquisition of  
 4-29 research superiority as provided by Subchapter F.

4-30 (c) Each state fiscal biennium, \$2 million deposited to the  
 4-31 fund must be allocated for making awards under this chapter to  
 4-32 companies that generate \$250,000 or less in annual gross revenue.

4-33 SECTION 13. Subchapter D, Chapter 490, Government Code, is  
 4-34 amended by adding Section 490.1521 to read as follows:

4-35 Sec. 490.1521. MINUTES OF CERTAIN MEETINGS. (a) Each  
 4-36 regional center of innovation and commercialization established  
 4-37 under Section 490.152, including the Texas Life Science Center for  
 4-38 Innovation and Commercialization, shall keep minutes of each  
 4-39 meeting at which applications for funding under this subchapter are  
 4-40 evaluated. The minutes must:

4-41 (1) include the name of each applicant recommended by  
 4-42 the regional center of innovation and commercialization to the  
 4-43 committee for funding; and

4-44 (2) indicate the vote of each member of the governing  
 4-45 body of the regional center of innovation and commercialization,  
 4-46 including any recusal by a member and the member's reason for  
 4-47 recusal, with regard to each application reviewed.

4-48 (b) Each regional center of innovation and  
 4-49 commercialization shall retain a copy of the minutes of each  
 4-50 meeting to which this section applies for at least three years.

4-51 SECTION 14. Chapter 490, Government Code, is amended by  
 4-52 adding Subchapter J to read as follows:

4-53 SUBCHAPTER J. STRATEGIC RESEARCH INITIATIVE PROGRAMS

4-54 Sec. 490.451. USE OF MONEY FOR STRATEGIC RESEARCH  
 4-55 INITIATIVE PROGRAMS. (a) Notwithstanding Section 490.102, the  
 4-56 governor may allocate money appropriated to the fund by the  
 4-57 legislature to provide grants to public or private institutions of  
 4-58 higher education in this state for the creation of strategic  
 4-59 research initiative programs as provided by this subchapter.

4-60 (b) The committee shall recommend proposals eligible for  
 4-61 funding under this section to the governor, lieutenant governor,  
 4-62 and speaker of the house of representatives.

4-63 (c) The amount allocated for funding proposals under this  
 4-64 subchapter may not exceed \$2 million in any state fiscal biennium.

4-65 Sec. 490.452. PURPOSE. In recommending proposals for  
 4-66 funding, the committee shall give specific emphasis to programs  
 4-67 designed to provide financial assistance to enable professors,  
 4-68 researchers, and other employees of public or private institutions  
 4-69 of higher education to obtain an increased amount of federal grant

5-1 money for research in this state.

5-2 Sec. 490.453. PRIORITY FOR FUNDING. In funding proposals  
 5-3 under this subchapter, priority shall be given to proposals that  
 5-4 strengthen this state's competitiveness in obtaining federal grant  
 5-5 money for research by:

5-6 (1) creating programs designed for and intended to  
 5-7 achieve this purpose;

5-8 (2) funding travel for professors, researchers, and  
 5-9 other employees of public or private institutions of higher  
 5-10 education in this state; and

5-11 (3) allowing public or private institutions of higher  
 5-12 education in this state to engage in innovative efforts to achieve  
 5-13 this purpose.

5-14 Sec. 490.454. GUARANTEE OF ACTION BY PARTICIPATING ENTITY.

5-15 (a) An institution of higher education participating in a  
 5-16 strategic research initiative program that receives funding under  
 5-17 this subchapter shall guarantee by contract with the governor's  
 5-18 office that the institution will perform specific actions expected  
 5-19 to provide benefits to this state.

5-20 (b) If an institution of higher education fails to perform  
 5-21 an action guaranteed by contract under Subsection (a) before a time  
 5-22 specified by the contract, the institution shall return to the fund  
 5-23 the grant money received by the institution under this subchapter.

5-24 Sec. 490.455. AUTHORIZED EXPENSES. Money awarded from the  
 5-25 fund under this subchapter may be used for authorized expenses,  
 5-26 including salaries and benefits, travel, consumable supplies,  
 5-27 other operating expenses, capital equipment, construction or  
 5-28 renovation of state or private facilities, and workforce training.

5-29 SECTION 15. Section 203.021, Labor Code, is amended by  
 5-30 adding Subsection (e) to read as follows:

5-31 (e) Money in the compensation fund may not be transferred to  
 5-32 the:

5-33 (1) Texas Enterprise Fund created under Section  
 5-34 481.078, Government Code; or

5-35 (2) Texas emerging technology fund established under  
 5-36 Section 490.101, Government Code.

5-37 SECTION 16. Section 204.123, Labor Code, is amended to read  
 5-38 as follows:

5-39 Sec. 204.123. TRANSFER TO [TEXAS ENTERPRISE FUND,] SKILLS  
 5-40 DEVELOPMENT FUND, TRAINING STABILIZATION FUND, AND COMPENSATION  
 5-41 FUND. (a) If, on September 1 of a year, the commission determines  
 5-42 that the amount in the compensation fund will exceed 100 percent of  
 5-43 its floor as computed under Section 204.061 on the next October 1  
 5-44 computation date, the commission shall transfer from the holding  
 5-45 fund created under Section 204.122:

5-46 (1) [from the first \$160 million deposited in the  
 5-47 holding fund in any state fiscal biennium:

5-48 [(A) during the state fiscal biennium ending  
 5-49 August 31, 2007:

5-50 [(i) 67 percent to the Texas Enterprise  
 5-51 Fund created under Section 481.078, Government Code, except that  
 5-52 the amount transferred under this paragraph may not exceed the  
 5-53 amount appropriated by the legislature to the Texas Enterprise Fund  
 5-54 in that biennium; and

5-55 [(ii) 33 percent to the skills development  
 5-56 fund created under Section 303.003, except that the amount  
 5-57 transferred under this paragraph may not exceed the amount  
 5-58 appropriated by the legislature to the skills development program  
 5-59 strategies and activities in that biennium; and

5-60 [(B)] during any state fiscal biennium beginning  
 5-61 on or after September 1, 2007, 100[+]

5-62 [(i) 75 percent to the Texas Enterprise  
 5-63 Fund created under Section 481.078, Government Code, except that  
 5-64 the amount transferred under this paragraph may not exceed the  
 5-65 amount appropriated by the legislature to the Texas Enterprise Fund  
 5-66 in that biennium; and

5-67 [(ii) 25] percent to the skills development  
 5-68 fund created under Section 303.003, except that the amount  
 5-69 transferred under this subdivision [paragraph] may not exceed the

6-1 amount appropriated by the legislature to the skills development  
6-2 program strategies and activities in that biennium; and

6-3 (2) any remaining amount in the holding fund after the  
6-4 distribution under Subdivision (1) to the training stabilization  
6-5 fund created under Section 302.101.

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

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

6-19 (b) Money in the training stabilization fund may be used in  
6-20 a year in which the amounts in the employment and training  
6-21 investment holding fund are insufficient to meet the legislative  
6-22 appropriation for that fiscal year for ~~[either the Texas Enterprise~~  
6-23 ~~Fund or]~~ the skills development program strategies and activities.

6-24 (c) Money in the training stabilization fund shall be  
6-25 transferred to the ~~[Texas Enterprise Fund and the]~~ skills  
6-26 development fund under Subsection (b) not later than September  
6-27 30. ~~[The transfer under Subsection (b) shall consist of~~  
6-28 ~~transferring 67 percent of the money in the training stabilization~~  
6-29 ~~fund to the Texas Enterprise Fund and 33 percent of the money in the~~  
6-30 ~~training stabilization fund to the skills development fund.]~~ The  
6-31 amount transferred from the training stabilization fund may not  
6-32 exceed the amounts appropriated to the ~~[Texas Enterprise Fund and]~~  
6-33 skills development program strategies and activities in the fiscal  
6-34 year in which the transfer is made.

6-35 SECTION 18. Subsection (e), Section 481.078 and Subsection  
6-36 (f), Section 490.101, Government Code, as amended by this Act, and  
6-37 Subsection (f-1), Section 490.101, Government Code, as added by  
6-38 this Act, apply only to a proposal for an award from the Texas  
6-39 Enterprise Fund or Texas emerging technology fund submitted by the  
6-40 governor to the lieutenant governor or speaker of the house of  
6-41 representatives for prior approval on or after the effective date  
6-42 of this Act. A proposal submitted by the governor for prior  
6-43 approval before the effective date of this Act is governed by the  
6-44 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. Subsection (f-1), Section 481.078, Government  
6-48 Code, as added by this Act, applies only to a grant agreement that  
6-49 is entered into on or after the effective date of this Act. A grant  
6-50 agreement that is entered into before the effective date of this Act  
6-51 is governed by the law in effect on the date the agreement was  
6-52 entered into, and the former law is continued in effect for that  
6-53 purpose.

6-54 SECTION 20. (a) The terms of the members of the Texas  
6-55 Emerging Technology Advisory Committee serving immediately before  
6-56 the effective date of this Act expire September 1, 2011.

6-57 (b) As soon as practicable after this Act takes effect, the  
6-58 governor, lieutenant governor, and speaker of the house of  
6-59 representatives shall appoint members to the Texas Emerging  
6-60 Technology Advisory Committee established under Subchapter B,  
6-61 Chapter 490, Government Code, in a manner that complies with that  
6-62 subchapter, as amended by this Act.

6-63 (c) At the first meeting of members of the Texas Emerging  
6-64 Technology Advisory Committee established under Subchapter B,  
6-65 Chapter 490, Government Code, as amended by this Act, occurring on  
6-66 or after September 1, 2011, the members appointed by the governor  
6-67 shall draw lots to determine which six members will serve a term  
6-68 expiring September 1, 2012, and which seven members will serve a  
6-69 term expiring September 1, 2013.

7-1 SECTION 21. Section 490.102, Government Code, as amended by  
7-2 this Act, applies only to an award from the Texas emerging  
7-3 technology fund that is made on or after the effective date of this  
7-4 Act. An award from the Texas emerging technology fund made before  
7-5 the effective date of this Act is governed by the law in effect on  
7-6 the date the award was made, and the former law is continued in  
7-7 effect for that purpose.

7-8 SECTION 22. This Act takes effect September 1, 2011.

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