

By: Villalba

H.B. No. 3853

A BILL TO BE ENTITLED

AN ACT

relating to creation of the university research initiative fund,  
the abolishment of the Texas emerging technology fund, and the  
disposition of balances from the Texas emerging technology fund.

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

SECTION 1. Subtitle H, Title 3, Education Code, is amended  
by adding Chapter 156 to read as follows:

CHAPTER 156. UNIVERSITY RESEARCH INITIATIVE FUND

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 156.001. DEFINITIONS. In this chapter:

(1) "Coordinating board" means the Texas Higher  
Education Coordinating Board.

(2) "Fund" means the university research initiative  
fund established under Subchapter B.

(3) "Institution of higher education" has the meaning  
assigned by Section 61.003.

SUBCHAPTER B. OPERATION OF FUND AND PROGRAM

Sec. 156.051. UNIVERSITY RESEARCH INITIATIVE FUND. (a)  
The university research initiative fund is a dedicated account in  
the general revenue fund.

(b) The fund consists of:

(1) amounts appropriated or otherwise allocated or  
transferred by law to the fund;

(2) any financial benefits realized from

1 commercialization of intellectual or other property developed in  
2 connection with a grant award as provided by an agreement entered  
3 into under Section 156.053; and

4 (3) gifts, grants, and other donations received for  
5 the fund.

6 (c) The fund may be used by the coordinating board only for:

7 (1) the purpose specified by Section 156.052; and

8 (2) necessary expenses incurred in the administration  
9 of the fund and this chapter.

10 Sec. 156.052. RECRUITMENT OF NATIONALLY OR INTERNATIONALLY  
11 RENOWNED RESEARCHERS; MATCHING GRANTS. (a) The coordinating board  
12 shall provide grants from the fund to institutions of higher  
13 education to match available funding from those institutions for  
14 the recruitment and retention of:

15 (1) members of recognized national academies in the  
16 fields of science, technology, engineering, or mathematics or other  
17 nationally recognized researchers in those fields and any  
18 associated assistants; or

19 (2) researchers who are Nobel laureates in the fields  
20 of science or mathematics or other internationally recognized  
21 researchers in the fields described by this subsection or the  
22 fields of technology or engineering and any associated assistants.

23 (b) In awarding grants, the coordinating board shall give  
24 priority to proposals that involve the recruiting of researchers in  
25 fields that are reasonably likely to contribute substantially to  
26 this state's national and global economic competitiveness.

27 (c) The coordinating board may appoint one or more advisory

1 committees to assist the board with the review and evaluation of  
2 grant proposals under this section.

3 Sec. 156.053. MATCHING GRANT AGREEMENT. (a) Before  
4 awarding a matching grant under this chapter, the coordinating  
5 board shall enter into a written agreement with the institution of  
6 higher education selected to receive the grant.

7 (b) The agreement between the coordinating board and a grant  
8 recipient under this chapter must provide for the distribution of  
9 royalties, revenue, or other financial benefits realized from the  
10 commercialization of intellectual or real property developed in  
11 connection with receipt of a grant under this chapter. To the extent  
12 authorized by law and not in conflict with another agreement, the  
13 agreement shall appropriately allocate by assignment, licensing,  
14 or other means 50 percent of the royalties, revenue, or other  
15 financial benefits to this state for deposit in the fund.

16 (c) An agreement under this section may include a provision  
17 specifying that if, as of a date certain provided in the agreement,  
18 the grant recipient has not used the money received under this  
19 chapter for the purposes for which the grant was intended, the  
20 grant recipient shall repay that amount and any related interest  
21 applicable under the agreement to the coordinating board for  
22 deposit to the fund at the agreed rate and on the agreed terms.

23 Sec. 156.054. AUTHORIZED EXPENSES. Money awarded from the  
24 fund may be used by the grant recipient to pay any expense  
25 reasonably related to the purposes described by Section 156.052(a),  
26 including for research and research capability, salaries and  
27 benefits, travel, consumable supplies, and equipment.

1       Sec. 156.055. PROHIBITED ACTIVITIES. (a) An institution  
2 of higher education may not knowingly attempt to recruit a person  
3 described by Section 156.052(a)(1) or (2) who is an individual  
4 researcher of another institution of higher education.

5       (b) An institution of higher education that violates this  
6 section is ineligible to receive a grant under this chapter before  
7 the third anniversary of the date the institution last engaged in  
8 conduct prohibited by this section.

9       Sec. 156.056. DOCUMENTATION OF BENEFITS TO STATE. An  
10 institution of higher education must document specific benefits  
11 that this state may expect to gain as a result of recruiting  
12 researchers described by Section 156.052(a)(1) or (2) to the  
13 institution and enhancing the research capabilities and programs of  
14 the institution before the institution may enter into an agreement  
15 to receive a grant under this chapter.

16       Sec. 156.057. ANNUAL REPORT. (a) Not later than January 31  
17 of each year, the coordinating board shall submit to the governor,  
18 the lieutenant governor, the speaker of the house of  
19 representatives, and the standing committee of each house of the  
20 legislature with primary jurisdiction over economic development  
21 matters a report that includes the following information regarding  
22 grants awarded under this chapter during the preceding state fiscal  
23 year:

24               (1) the total number and amount of grants awarded; and  
25               (2) the name of each grant recipient and the amount of  
26 the grant awarded to the recipient.

27       (b) The coordinating board shall post and maintain on the

1 coordinating board's Internet website each report submitted under  
2 this section.

3 SECTION 2. Subchapter G, Chapter 404, Government Code, is  
4 amended by adding Section 404.1031 to read as follows:

5 Sec. 404.1031. MANAGEMENT OF INVESTMENT PORTFOLIO FROM  
6 FORMER TEXAS EMERGING TECHNOLOGY FUND. (a) In this section,  
7 "state's emerging technology investment portfolio" means:

8 (1) the equity positions in the form of stock or other  
9 security the governor took, on behalf of the state, in companies  
10 that received awards under the former Texas emerging technology  
11 fund; and

12 (2) any other investments made by the governor, on  
13 behalf of the state, in connection with an award made under the  
14 former Texas emerging technology fund.

15 (b) The trust company shall manage the state's emerging  
16 technology investment portfolio in a manner that a prudent  
17 investor would employ exercising reasonable care, skill, and  
18 caution, taking into consideration the investment of all assets of  
19 the portfolio. The trust company may recover its reasonable and  
20 necessary costs incurred in the management of the portfolio from  
21 the earnings on the investments in the portfolio.

22 (c) Any proceeds or other earnings from the sale of stock or  
23 other investments in the state's emerging technology investment  
24 portfolio, less the amount permitted to be retained for payment of  
25 its costs for managing the portfolio as provided by Subsection (b),  
26 shall be remitted by the trust company to the comptroller for  
27 deposit in the general revenue fund.

1 SECTION 3. Effective September 1, 2016, Subchapter G,  
2 Chapter 404, Government Code, is amended by adding Section 404.1032  
3 to read as follows:

4 Sec. 404.1032. VALUATION OF INVESTMENTS FROM FORMER FUND;  
5 ANNUAL REPORT. (a) To the maximum extent practicable, the  
6 non-profit annually shall perform a valuation of the equity  
7 positions the governor took, on behalf of the state, in companies  
8 that received awards under the former Texas emerging technology  
9 fund and of other investments made by the governor, on behalf of the  
10 state, in connection with an award under that fund. The valuation  
11 must be based on a methodology that is consistent with generally  
12 accepted accounting principles.

13 (b) Not later than January 31 of each year, the trust  
14 company shall submit to the lieutenant governor, the speaker of the  
15 house of representatives, and the standing committee of each house  
16 of the legislature with primary jurisdiction over economic  
17 development matters and post on the office of the trust company's  
18 Internet website a report of any valuation performed under this  
19 section during the preceding state fiscal year.

20 SECTION 4. Section 481.078, Government Code, is amended by  
21 adding Subsection (m) to read as follows:

22 (m) The office of the governor shall adopt rules for the  
23 operation of the trustee program established under this section.

24 The rules must include:

25 (1) forms and procedures for applications for and  
26 award of grants;

27 (2) procedures for evaluating grant applications;

1           (3) provisions governing the grant agreement process;  
2 and  
3           (4) methods and procedures for monitoring grant  
4 recipients and projects or activities for which a grant is awarded  
5 from the fund to determine whether and to what extent the grant  
6 recipients comply with job creation performance targets, capital  
7 investment commitments, or other specified performance targets in  
8 the grant agreement.

9           SECTION 5. Subchapter D, Chapter 490, Government Code, is  
10 repealed.

11           SECTION 6. Section 490.001(4), Government Code, is amended  
12 to read as follows:

- 13           (4) "Award" means:
- 14                   (A) for purposes of former Subchapter D, an  
15 investment 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, 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 7. Sections 490.005(a) and (b), Government Code,  
23 are amended to read as follows:

24           (a) Not later than January 31 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 preceding state fiscal year:

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

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

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

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

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

17 (b) The annual report must also contain:

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

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

22 (3) a brief description regarding~~+~~

23 ~~-(A)]~~ the methodology used to determine the  
24 information provided under Subdivisions (1) and (2), which may be  
25 developed in consultation with the comptroller's office~~+~~.

26 ~~[-(B) the intended outcomes of projects funded~~  
27 ~~under Subchapter D during each preceding state fiscal year; and~~



1           ~~(C) the actual outcomes of all projects funded~~  
2 ~~under Subchapter D during each preceding state fiscal year,~~  
3 ~~including any financial impact on the state resulting from a~~  
4 ~~liquidity event involving a company whose project was funded under~~  
5 ~~that subchapter.]~~

6           SECTION 8. Subchapter A, Chapter 490, Government Code, is  
7 amended by adding Section 490.007 to read as follows:

8           Sec. 490.007. TRANSFER OF EQUITY INVESTMENTS AND  
9 CONVERTIBLE NOTES.

10           All investments in the form of equity or convertible notes  
11 made by the fund under the former Subchapter D and under Subchapter  
12 E prior to September 1, 2015 are hereby transferred to the Texas  
13 Technology Investment Portfolio, an investment portfolio, and  
14 governed by Subchapter R, Chapter 403, Government Code.

15           SECTION 9. Section 490.102(a), Government Code, is amended  
16 to read as follows:

17           (a) Money appropriated to the fund by the legislature, less  
18 amounts necessary to administer the fund under Section 490.055,  
19 shall be allocated as follows:

20           (1) 50 percent of the money [~~for incentives for~~  
21 ~~collaboration between certain entities as provided by Subchapter D,~~  
22           ~~[(2) 16.67 percent of the money for research award~~  
23 ~~matching as provided by Subchapter E~~ to the university research  
24 initiative fund under Subchapter B, Chapter 156, Education Code, as  
25 added by this Act.; and

26           (2) 50 [~~(3) 33.33~~] percent of the money for  
27 acquisition of research superiority as provided by Subchapter F.

1 SECTION 10. Section 490.303, Government Code, is amended to  
2 read as follows:

3 Sec. 490.303. ELIGIBILITY OF CLEAN COAL PROJECT FOR MONEY.  
4 Notwithstanding any other provision of this subchapter, a clean  
5 coal project constitutes an opportunity for emerging technology  
6 suitable for consideration for a grant under Subchapter C,  
7 [~~incentives as provided by Subchapter D,~~] grant matching as  
8 provided by Subchapter E, and acquisition of research superiority  
9 under Subchapter F.

10 SECTION 11. Subchapter R, Chapter 403, Government Code, is  
11 added to read as follows:

12 Sec. 403.501. DEFINITIONS.

13 In this subchapter:

14 (1) "Board" or "board" means the board of the  
15 non-profit organization managing the Texas Technology Investment  
16 Portfolio.

17 (2) "Institution" and "institutional fund" have the  
18 meanings assigned by Chapter 163, Property Code.

19 (3) "Participated" means to have taken action as an  
20 officer or employee through decision, approval, disapproval,  
21 recommendation, giving advice, investigation, or similar action.

22 (4) "Particular matter" means a specific  
23 investigation, application, request for a ruling or determination,  
24 rulemaking proceeding, contract, claim, charge, accusation,  
25 arrest, or judicial or other proceeding.

26 Sec. 403.502. TEXAS TECHNOLOGY INVESTMENT PORTFOLIO  
27 MANAGEMENT; AUTHORITY.

1       (a) The office of the comptroller is hereby delegated  
2 investment authority for the management of the former Subchapter D,  
3 Section 490, Government Code investments, hereafter referred to as  
4 the Texas Technology Investment Portfolio, to the same extent as an  
5 institution with respect to an institutional fund under Chapter  
6 163, Property Code.

7       (b) The office of the comptroller may enter into a contract  
8 with a nonprofit corporation for the corporation to manage the  
9 Texas Technology Investment Portfolio and appoint the members of  
10 the board of the nonprofit corporation. The corporation may not  
11 engage in any business other than portfolio management and  
12 investment/re-investment of funds designated by the board under the  
13 contract.

14       Sec. 403.503. PORTFOLIO MANAGEMENT; BOARD AUTHORITY,  
15 MEMBERSHIP, REQUIREMENTS.

16       (a) The board of the nonprofit corporation must approve the:

17               (1) articles of incorporation and bylaws of the  
18 corporation and any amendment to the articles of incorporation or  
19 bylaws;

20               (2) investment policies of the corporation, including  
21 changes to those policies;

22               (3) audit and ethics committee of the corporation;

23               (4) code of ethics of the corporation;

24               (5) hiring and firing of the officers of the  
25 corporation;

26               (6) annual operating budget for the corporation; and

27               (6) approving material amendments or changes to any

1 existing contract with a recipient.

2 (b) The board of directors of the corporation shall have  
3 five members;

4 (c) The appointed board of directors shall possess  
5 background and expertise in law, finance and/or investment  
6 portfolio management; and

7 (d) Each appointed member of the board of directors of the  
8 corporation is subject to removal and replacement by and at the  
9 pleasure of the comptroller.

10 (e) The corporation shall file quarterly reports with the  
11 board concerning matters required by the board.

12 (h) The corporation is subject to the Texas Non-Profit  
13 Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil  
14 Statutes).

15 Sec. 403.504. CONFIDENTIAL INFORMATION; CONFLICTS.

16 (a) Information collected by the corporation, the board or  
17 the office of the comptroller concerning the identity, background,  
18 finance, marketing plans, trade secrets, or other commercially or  
19 academically sensitive information of an individual or entity being  
20 considered for, receiving, or having received an award from the  
21 fund is confidential unless the individual or entity consents to  
22 disclosure of the information.

23 (b) The following information collected by the  
24 corporation, the board or the office of the comptroller under this  
25 chapter is public information and may be disclosed under Chapter  
26 552:

27 (1) the name and address of each individual or entity

1 that comprises the portfolio;

2 (2) the balances of funds advanced and encumbered to  
3 each portfolio company;

4 (3) a brief description of the project for which the  
5 funds have been applied; and

6 (4) if applicable, a brief description of the equity  
7 position taken in an entity that has received funds from the state.

8 (c) The corporation may not enter into an agreement or  
9 transaction with a:

10 (1) director, officer, or employee of the corporation  
11 acting in other than an official capacity on behalf of the  
12 corporation; or

13 (2) business entity in which a director, officer, or  
14 employee of the corporation has an interest

15 (d) An agreement or transaction entered into in violation of  
16 Subsection (c) is void.

17 (e) For purposes of this section, a person has an interest  
18 in a business entity if:

19 (1) the person owns five percent or more of the voting  
20 stock or shares of the business entity;

21 (2) the person owns five percent or more of the fair  
22 market value of the business entity; or

23 (3) money received by the person from the business  
24 entity exceeds five percent of the person's gross income for the  
25 preceding calendar year.

26 (f) A former director of the corporation may not make any  
27 communication to or appearance before a director, officer, or

1 employee of the corporation before the second anniversary of the  
2 date an individual ceased to be a director of the corporation if the  
3 communication or appearance is made:

4 (1) with the intent to influence; and

5 (2) on behalf of any person in connection with any  
6 matter on which the person seeks action by the corporation.

7 (g) A former officer or employee of the corporation may not  
8 represent any person or receive compensation for services rendered  
9 on behalf of any person regarding a particular matter in which the  
10 former officer or employee participated during the period of  
11 service or employment with the corporation, either through  
12 personal involvement or because the particular matter was within  
13 the officer's or employee's responsibility.

14 (h) An individual who violates Subsection (f) or (g)  
15 commits an offense. An offense under this subsection is a Class A  
16 misdemeanor.

17 SECTION 12. (a) The repeal by this Act of Subchapter D,  
18 Chapter 490, Government Code, relating to certain  
19 commercialization of emerging technology activities funded by the  
20 Texas emerging technology fund, does not affect the validity of an  
21 agreement between the governor and the recipient of an award  
22 awarded under Subchapter D, Chapter 490, or a person to be awarded  
23 money under that subchapter that is entered into under Chapter 490  
24 before September 1, 2015.

25 (b) Money from the Texas emerging technology fund that is  
26 encumbered because the money is awarded under Subchapter D, Chapter  
27 490, Government Code, or otherwise obligated by agreement before

1 September 1, 2015, but under the terms of the award or agreement  
2 will not be distributed until a later date is now subject to  
3 Subchapter R, Section 403, Government Code and shall be distributed  
4 in accordance with the terms of the award or agreement.

5 SECTION 13. (a) Notwithstanding Section 490.005(a),  
6 Government Code, as amended by this Act, the report due under that  
7 section by January 31, 2016, must also include the specified  
8 information required by Subdivisions (1)-(5) of that section  
9 regarding awards made under Subchapter D, Chapter 490, Government  
10 Code, during the 2015 state fiscal year and each preceding state  
11 fiscal year.

12 (b) Notwithstanding Sections 490.005(a) and (b), Government  
13 Code, as amended by this Act, the report due under Section  
14 490.005(a) by January 31, 2016, must also contain the specified  
15 information required by Section 490.005(b) regarding projects  
16 receiving funding under Subchapter D, Chapter 490, Government Code,  
17 during the 2015 state fiscal year and each preceding state fiscal  
18 year.

19 SECTION 14. A regional center of innovation and  
20 commercialization established under Section 490.152, Government  
21 Code, is abolished on the effective date of this Act. Each center  
22 shall transfer to the office of the governor a copy of any meeting  
23 minutes required to be retained under Section 490.1521, Government  
24 Code, as that section existed immediately before that section's  
25 repeal by this Act, and the office shall retain the minutes for the  
26 period prescribed by that section.

27 SECTION 15. If a conflict exists between this Act and

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1 another Act of the 84th Legislature, Regular Session, 2015, that  
2 relates to the Texas emerging technology fund, this Act controls  
3 without regard to the relative dates of enactment.

4 SECTION 16. Except as otherwise provided by this Act, this  
5 Act takes effect September 1, 2015.