

BILL ANALYSIS

Senate Research Center
83R29276 RWG-F

C.S.H.B. 3162
By: Davis, John; Button (Deuell)
Economic Development
5/15/2013
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

C.S.H.B. 3162 amends current law relating to the Texas emerging technology fund; redesignating the fund as the Texas Research Technology Fund.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 490.001(1), (2), and (4), Government Code, to define "board," redefine "fund" and "award," and delete the existing definition of "committee."

SECTION 2. Amends Section 490.003, Government Code, as follows:

Sec. 490.003. EMERGING TECHNOLOGY INDUSTRIES. (a) Provides that an emerging technology industry participant may be eligible, rather than providing that an emerging technology industry participant is eligible, for funding under this chapter (Funding for Emerging Technology) if the activity to be funded:

(1)-(2) Makes a nonsubstantive change; or

(3) will result in the commercialization of a scientific breakthrough derived from research conducted at or owned by a research institution.

(b) Provides that emerging technology industries include certain industries, including industries related to water. Makes nonsubstantive changes.

SECTION 3. Amends Sections 490.005(a) and (b), Government Code, as follows:

(a) Requires the governor, not later than January 31 of each year, to submit to the lieutenant governor, the speaker of the house of representatives, and the standing committee of each house of the legislature with primary jurisdiction over economic development matters and post on the office of the governor's Internet website a report that includes certain information regarding awards made under the Texas Research Technology Fund (fund) during each preceding state fiscal year, including a description of the types of securities the governor, on behalf of the state, has taken in companies that have received an award.

(b) Requires that the annual report also contain:

(1) the aggregate total number of jobs, broken down according to the industry sectors described by Section 490.003(b), actually created by all projects, rather than each project, receiving funding under this chapter;

(2) an analysis of the number of jobs, broken down according to the industry sectors described by Section 490.003(b), actually created by all projects, rather than each project, receiving funding under this chapter;

(3) Makes a nonsubstantive change;

(4) the total number of jobs created by each project receiving funds under this chapter, expressed in increments of 10 jobs created by the project or as a number that is within five percent over or under the total number of jobs created by the project; and

(5) the average annual salaries in the award recipients' industries.

SECTION 4. Amends the heading to Subchapter B, Chapter 490, Government Code, to read as follows:

SUBCHAPTER B. TEXAS RESEARCH TECHNOLOGY FUND BOARD

SECTION 5. Amends Section 490.051, Government Code, as follows:

Sec. 490.051. New heading: TEXAS RESEARCH TECHNOLOGY FUND BOARD.

(a) Creates this subsection from existing text. Provides that the Texas Research Technology Fund Board (board) is administratively attached to the office of the governor. Requires the governor's office to provide staff and other administrative support for the board.

(b) Creates this subsection from existing text. Provides that the board is composed of 17 members.

Deletes existing text providing that the Texas Emerging Technology Advisory Committee (committee) is composed of 17 members.

SECTION 6. Amends the heading to Section 490.052, Government Code, to read as follows:

Sec. 490.052. APPOINTMENT TO BOARD; NOMINATIONS.

SECTION 7. Amends Sections 490.052(a), (a-1), (a-2), and (b), Government Code, as follows:

(a) Requires the governor to appoint to the board 13 individuals, rather than to appoint to the committee 13 individuals, nominated as provided by Subsection (b).

(a-1) Requires the lieutenant governor to appoint two individuals to the board, rather than two individuals to the committee.

(a-2) Requires the speaker of the house of representative to appoint two individuals to the board, rather than two individuals to the committee.

(b) Authorizes certain persons to nominate one or more individuals who are industry leaders in this state or who are nationally recognized leaders from public or private institutions of higher education in this state for appointment to the board, including other persons considered appropriate by the governor, lieutenant governor, or speaker of the house of representatives. Makes a conforming change.

SECTION 8. Amends Section 490.0521(a), Government Code, to make a conforming change.

SECTION 9. Amends Subchapter B, Chapter 490, Government Code, by adding Section 490.0522, as follows:

Sec. 490.0522. COMPENSATION; EXPENSES. Provides that members of the board serve without compensation but are entitled to reimbursement for actual and necessary

expenses incurred in attending board meetings or in performing other board duties approved by the Office of the Governor.

SECTION 10. Amends Section 490.053, Government Code, to make a conforming change.

SECTION 11. Amends Section 490.054, Government Code, as follows:

Sec. 490.054. TERMS. (a) Provides that members of the board appointed by the governor serve staggered two-year terms, with as near as possible to one-half of the members' terms expiring each year, subject to the pleasure of the governor, rather than providing that members of the committee appointed by the governor serve staggered two-year terms, subject to the pleasure of the governor.

(b) Provides that members of the board, rather than members of the committee, appointed by the lieutenant governor or the speaker of the house of representatives serve two-year terms.

(c) Provides that members of the board are not state officers.

SECTION 12. Amends Section 490.055, Government Code, as follows:

Sec. 490.055. STAFF AND FUNDING. Requires that necessary staff and funding for the administration of the fund be provided by:

(1)-(2) Makes a nonsubstantive change; and

(3) the fund as provided by Section 490.101.

SECTION 13. Amends Section 490.056, Government Code, by amending Subsections (a) and (c) and adding Subsection (a-1), as follows:

(a) Requires the board to make recommendations, through peer review and evaluation processes established by the board, to the governor, lieutenant governor, and speaker of the house of representatives for the award of money from the fund under Subchapters E (Research Award Matching) and F (Acquisition of Research Superiority) as provided by this chapter. Makes conforming changes.

(a-1) Requires that regional centers of innovation and commercialization formed under Subchapter I make recommendations to the board for the award of money from the fund under Subchapter D as provided by this chapter.

(c) Requires each entity recommended by a regional center of innovation and commercialization, rather than each entity recommended by the committee, for an award of money from the fund under Subchapter D as provided by this chapter to obtain and provide certain information to the Office of the Governor.

SECTION 14. Amends Section 490.057, Government Code, as follows:

Sec. 490.057. CONFIDENTIALITY. (a) Provides that except as provided by Subsection (b), information collected or received by the governor's office, the board, or the board's advisory panels concerning the background, finances, marketing plans, trade secrets, or other commercially or academically sensitive information of an individual or entity having applied for, being considered for, receiving, or having received an award from the fund is confidential unless the individual or entity consents to disclosure of the information, rather than providing that except as provided by Subsection (b), information collected by the governor's office, the committee, or the committee's advisory panels concerning the identity, background, marketing plans, trade secrets, or other commercially or academically sensitive information of an individual or entity being considered for, receiving, or having received an award from the fund is confidential unless the individual or entity consents to disclosure of the information.

(b) Provides that the following information collected by the governor's office, the board, or the board's advisory panels, rather than collected by the governor's office, the committee, or the committee's advisory panels, under this chapter is public information and is authorized to be disclosed under Chapter 552 (Public Information):

- (1) Makes no change to this subdivision;
- (2) the amount of funding received by an award recipient from the fund;
- (3) Makes no change to this subdivision;
- (4) if applicable, the type of equity that the governor, rather than a brief description of equity position that the governor, on behalf of the state, has taken in an entity that has received an award from the fund;
- (5) any other information with the consent of the individual or entity, rather than any other information designated by the committee with the consent of the individual or entity receiving or having received an award from the fund, as applicable, the governor, the lieutenant governor, and the speaker of the house of representatives; and
- (6) any other information otherwise available to the public.

Makes conforming changes.

SECTION 15. Amends Subchapter B, Chapter 490, Government Code, by adding Sections 490.058, 490.059, and 490.060, as follows:

Sec. 490.058. DIVISION OF RESPONSIBILITIES. Requires the board to develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the staff of the board.

Sec. 490.059. APPLICABILITY OF OPEN MEETINGS LAW. Provides that the board is subject to Chapter 551 (Open Meetings).

Sec. 490.060. MEETINGS. (a) Requires the board to hold four regular meetings each year and special meetings at the call of the presiding member.

(b) Authorizes the board, notwithstanding Chapter 551 or any other law, to use a telephone conference call, videoconference, or other similar telecommunication method in accordance with this section to establish a quorum, to hold an open or closed meeting, to vote, or for any other meeting purpose. Provides that this subsection applies without regard to the subject matter discussed or considered by the board at the meeting.

(c) Provides that a meeting held by telephone conference call, videoconference, or other similar telecommunication method:

- (1) is subject to the notice requirements applicable to other board meetings;
- (2) is prohibited from being held unless notice of the meeting specifies the location where the public is authorized to observe the meeting; and
- (3) must be open and audible to the public at the location specified in the notice under Subdivision (2) during the open portions of the meeting.

(d) Authorizes the board to conduct a closed meeting under Section 551.101 (Requirement to First Convene in Open Meeting) to:

(1) discuss or consider a matter that contains information that is confidential under Section 490.057; or

(2) hear testimony or presentations from an individual, entity, or group that contains information that is confidential under Section 490.057.

(e) Provides that this section does not prohibit the board from requesting the attendance at a closed meeting of a person who is not a member of the board and who has information regarding an applicant for or recipient of an award from the fund.

SECTION 16. Amends the heading to Subchapter C, Chapter 490, Government Code, to read as follows:

SUBCHAPTER C. TEXAS RESEARCH TECHNOLOGY FUND

SECTION 17. Amends the heading to Section 490.101, Government Code, to read as follows:

Sec. 490.101. TEXAS RESEARCH TECHNOLOGY FUND.

SECTION 18. Amends Sections 490.101(a), (c), (d), (f), and (f-1), Government Code, as follows:

(a) Provides that the Texas Research Technology Fund, rather than the Texas emerging technology fund, is a dedicated account in the general revenue fund.

(c) Authorizes the fund to be used only for the purposes described by Section 490.002 (Purposes), for necessary staff, administration of the fund including administration by the office of the governor, and services and expenses related to the fund as provided for by Section 490.055, and to compensate the fund manager under Section 490.157.

(d) Authorizes the board, rather than the committee, to solicit and accept gifts and grants for the fund from public and private entities.

(f) Authorizes the governor to award money appropriated from the fund for awards under Subchapters E and F only with the prior approval of the lieutenant governor and speaker of the house of representatives. Authorizes the governor to award money appropriated from the fund for awards under Subchapter D or to allocate money from the fund for use as provided by Subchapter I, only with the prior approval of the board.

(f-1) Provides that for purposes of Subsection (f), an award of money appropriated from the fund for awards under Subchapters E and F is considered disapproved by the lieutenant governor or speaker of the house of representative if that officer does not approve the proposal to award funding before the 91st day after the date of receipt of the proposal from the governor.

SECTION 19. Amends Section 490.102(a), Government Code, as follows:

(a) Requires that money appropriated to or otherwise deposited to the fund under Section 490.101(b) (relating to requiring that certain amounts be deposited in the fund), including money retained in the fund from a previous biennium, rather than money appropriated to the fund by the legislature, less amounts necessary to administer the fund under Section 490.055, be allocated as follows:

(1) 46 percent, rather than 50 percent, of the money for incentives for collaboration between certain entities as provided by Subchapter D;

(2)-(3) Makes nonsubstantive changes; and

(4) four percent of the money for regional centers of innovation and commercialization as provided by Subchapter I.

SECTION 20. Amends Section 490.151, Government Code, by adding Subsection (a-1) and amending Subsection (b), as follows:

(a-1) Provides that the following private and nonprofit entities are eligible for incentives under this subchapter:

(1) a private entity that is partially owned by an institution of higher education and is seeking to commercialize technology acquired from the partnering institution;

(2) a private entity that is a qualified spin-out, as determined by the board, of an institution of higher education;

(3) a private entity seeking to commercialize technology acquired from the Lyndon B. Johnson Space Center of the National Aeronautics and Space Administration;

(4) a private or nonprofit entity partnering with a research institution through a sponsored research agreement or qualified collaborative agreement; or

(5) a private entity that has received an award under this chapter and has received an equity investment commitment from a qualified investor, as determined by the board, for commercialization and growth purposes.

(b) Requires that the regional centers of innovation and commercialization formed under Subchapter I recommend proposals eligible for funding under this subchapter to the board, rather than requiring the committee to recommend proposals eligible for funding under this section to the governor, lieutenant governor, and speaker of the house of representatives.

SECTION 21. Amends Section 490.154(a), Government Code, to require an entity participating in a regional center of innovation and commercialization formed under Subchapter I that receives funding or another incentive under this subchapter to guarantee by contract with the governor's office that the entity will perform specific actions expected to provide benefits to this state.

SECTION 22. Amends Subchapter D, Chapter 490, Government Code, by adding Section 490.157, as follows:

Sec. 490.157. FUND MANAGER. (a) Requires the office of the governor to employ or contract with a fund manager to manage equity positions or other investments received by the office of the governor in consideration for an award made. Requires the fund manager to perform such duties for the purpose of managing equity positions or other investments made under this subchapter.

(b) Authorizes the board to recommend an entity or individual to the office of the governor to serve as the fund manager under Subsection (a). Authorizes the board to also recommend to the office of the governor:

(1) the duties of the fund manager;

(2) the appropriate compensation of the fund manager; and

(3) the termination of the employment of or contract with the fund manager.

SECTION 23. Amends Chapter 490, Government Code, by adding Subchapter I, and adds a heading to that subchapter, to read as follows:

SUBCHAPTER I. REGIONAL CENTERS OF INNOVATION AND COMMERCIALIZATION

SECTION 24. Transfers Sections 490.152 and 490.1521, Government Code, to Subchapter I, Chapter 490, Government Code, as added by this Act, redesignates them as Sections 490.401 and 490.402, Government Code, and amends them as follows:

Sec. 490.401. New heading: **USE OF MONEY FOR REGIONAL CENTERS OF INNOVATION AND COMMERCIALIZATION.** Redesignates existing Section 490.152 as Section 490.401. (a) Authorizes amounts allocated from the fund for use as provided by this subchapter to be used by an entity described by Section 490.151(a) (relating to requiring that amounts allocated from the fund for use as provided by this subchapter be reserved for incentives for certain entities) or an appropriate combination of any entities described by that subsection to form and maintain a regional center of innovation and commercialization to serve a region of this state. Deletes existing text requiring the committee, in recommending proposals for funding, to give specific emphasis to the formation of regional centers of innovation and commercialization.

Deletes existing Subsection (b) text authorizing an appropriate combination of any entities described by Section 490.151(a) to collaborate to form a regional center of innovation and commercialization to serve a region of this state.

(b) Redesignates existing Subsection (c) as Subsection (b) and makes no further change to this subsection.

(c) Redesignates existing Subsection (d) as Subsection (c) and changes a reference to committee to board.

Sec. 490.402. **MINUTES OF CERTAIN MEETINGS.** Redesignates existing Section 490.1521 as Section 490.402. (a) Requires each regional center of innovation and commercialization established under Section 490.401, rather than Section 490.152, including the Texas Life Science Center for Innovation and Commercialization, to keep minutes of each meeting at which applications for funding under Subchapter D, rather than this subchapter, are evaluated. Requires that the minutes, in addition to other requirements, include the name of each applicant recommended by the regional center of innovation and commercialization to the board, rather than to the committee, for funding under Subchapter D.

(b) Makes no change to this subsection.

SECTION 25. Amends Section 490.201(b), Government Code, to make a conforming change.

SECTION 26. Amends Section 490.253, Government Code, to make conforming changes.

SECTION 27. Amends Section 490.257(b), Government Code, to make a conforming change.

SECTION 28. Amends Section 50D.013(a), Agriculture Code, to require the Texas Bioenergy Policy Council, in addition to other requirements, to foster development of cellulosic-based and bio-based fuels and build on the Texas Research Technology Fund's investments, rather than the Texas emerging technology fund's investments, in leading-edge energy research and efforts to commercialize the production of bioenergy.

SECTION 29. Amends Section 203.021(e), Labor Code, to prohibit the money in the unemployment compensation fund from being transferred to certain funds, including the Texas Research Technology Fund, rather than the Texas emerging technology fund, established under Section 490.101, Government Code.

SECTION 30. Repealers: Sections 490.056(e) (relating to requiring the governor to provide each officer with a copy of the information provided by the appropriate entity under Subsection (c) with each proposal to award funding submitted by the governor to the lieutenant governor and speaker of the house of representatives for purposes of obtaining prior approval) and 490.153(b) (relating to authorizing an amount not to exceed two percent of the amount allocated for a fiscal biennium for incentives under this subchapter to be invested directly in the regional centers of innovation and commercialization as recommended by the committee and approved by the governor, lieutenant governor, and speaker of the house of representatives to support commercialization activities), Government Code.

SECTION 31. Provides that the terms of the members of the Texas Emerging Technology Advisory Committee serving immediately before the effective date of this Act expire September 1, 2013.

SECTION 32. (a) Provides that as soon as practicable after the effective date of this Act:

(1) the governor, lieutenant governor, and speaker of the house of representatives are required to appoint members to the board established under Subchapter B, Chapter 490, Government Code, in a manner that complies with that subchapter, as amended by this Act; and

(2) the governor is required to appoint the initial presiding member of the board.

(b) Requires the members appointed by the governor, at the first meeting of members of the board appointed under Subchapter B, Chapter 490, Government Code, as amended by this Act, occurring on or after September 1, 2013, to draw lots to determine which seven members will serve terms expiring September 1, 2014, and which six members will serve terms expiring September 1, 2015.

SECTION 33. Effective date: September 1, 2013.