

# VIRGINIA ACTS OF ASSEMBLY -- 2010 SESSION

## CHAPTER 482

*An Act to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 22.7, consisting of a section numbered 59.1-284.24, relating to the Specialized Biotechnology Research Performance Grant Program; established.*

[S 644]

Approved April 11, 2010

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding in Title 59.1 a chapter numbered 22.7, consisting of a section numbered 59.1-284.24, as follows:**

### **CHAPTER 22.7.**

#### **SPECIALIZED BIOTECHNOLOGY RESEARCH PERFORMANCE GRANT PROGRAM.**

**§ 59.1-284.24. Specialized Biotechnology Research Performance Grant Program.**

**A. As used in this section:**

*"Authority" means the Virginia Economic Development Partnership Authority.*

*"Capital investment" means an investment in real property, tangible personal property, or both, made or caused to be made by a qualified entity in a facility.*

*"Eligible county" means Fairfax County.*

*"Grant" means an installment of the specialized biotechnology research performance grant paid in a particular fiscal year as described in this section.*

*"Facility" means any facility that, pursuant to a memorandum of understanding, is to be owned or leased by the qualified entity and operated by the qualified entity for research, development and production related to molecular diagnostics and drug development. The facility includes temporary wet lab and office space at the Center for Innovative Technology building and permanent space to be developed for and used by the qualified entity in an eligible county.*

*"Memorandum of understanding" means a performance agreement to be entered into by June 30, 2010, by a qualified entity and the Commonwealth setting forth the requirements for capital investment, the creation of new full-time jobs, fundraising commitments, collaboration with Virginia universities, research contracts, and other criteria that will make the qualified entity eligible for grants under this section.*

*"New full-time job" means employment of an indefinite duration in a facility, for which the average annual wage is at least equal to the prevailing average annual wage in an eligible county and for which the standard fringe benefits are paid by the qualified entity, requiring a minimum of either (i) 35 hours of an employee's time per week for the entire normal year of such qualified entity's operations, which "normal year" must consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions and positions created when a job function is shifted from an existing location in the Commonwealth shall not qualify as new full-time jobs under this section. Other positions, which may or may not be of indefinite duration, including supplemental employees of affiliates, subsidiaries, joint ventures, contractors, or subcontractors of the qualified entity, may be considered new full-time jobs if so designated as such in the memorandum of understanding.*

*"Qualified entity" means a 501(c)(3) nonprofit entity that is or will be engaged in research, development, and production related to molecular diagnostics and drug development and that will commit itself in the memorandum of understanding to (i) make or cause to be made a new capital investment of at least \$200 million after January 1, 2010, at a facility; (ii) create or cause to be created, after January 1, 2010, at least 415 new full-time jobs related to the qualified entity's operations; and (iii) meet the other criteria set forth in the memorandum of understanding.*

*"Secretary" means the Secretary of Commerce and Trade or his designee.*

*B. Any qualified entity shall be eligible to receive a grant each fiscal year beginning with the Commonwealth's fiscal year starting on July 1, 2011, and ending with the Commonwealth's fiscal year starting on July 1, 2014, unless such time frame is extended in accordance with this section. The grants under this section (i) shall be paid, subject to appropriation by the General Assembly, from a nonreverting fund entitled the Specialized Biotechnology Research Performance Grant Program Fund, which Fund is hereby established on the books of the Comptroller; (ii) shall not exceed \$22 million in the aggregate; (iii) shall be paid to a qualified entity during each fiscal year contingent upon the qualified entity meeting the requirements for the creation of new full-time jobs, new capital investment, and other criteria set forth in the memorandum of understanding; and (iv) shall be expended by or for the benefit of the qualified entity on the costs of developing a facility or establishing or maintaining the qualified entity's operations.*

*1. The amount of the grant to be paid in each fiscal year shall be conditioned upon the qualified*

entity meeting the requirements for (i) the aggregate number of new full-time jobs created throughout the calendar year that immediately precedes the beginning of such fiscal year; (ii) the aggregate amount of the capital investment made throughout the calendar year that immediately precedes the beginning of such fiscal year; and (iii) other criteria described in the memorandum of understanding. If the qualified entity has not met the grant requirements set forth in the memorandum of understanding by December 31, 2015, the period of eligibility may be extended for up to two years, provided that the grants paid in any given fiscal year shall not exceed \$5.5 million, plus any amounts deferred in accordance with subsection C or D. Grants shall be paid based upon such requirements as agreed to on or before June 30, 2010, regardless if such memorandum of understanding is later modified, amended, superseded, or otherwise changed.

2. The aggregate amount of grants that may be awarded in a particular fiscal year shall not exceed the following:

- a. \$5.5 million for the Commonwealth's fiscal year beginning July 1, 2011;
- b. \$11 million, less the total amount of grants previously awarded pursuant to this subsection, for the Commonwealth's fiscal year beginning July 1, 2012;
- c. \$16.5 million, less the total amount of grants previously awarded pursuant to this subsection, for the Commonwealth's fiscal year beginning July 1, 2013; and
- d. \$22 million, less the total amount of grants previously awarded pursuant to this subsection, for the Commonwealth's fiscal year beginning July 1, 2014.

C. Any qualified entity applying for a grant under this section shall provide evidence, satisfactory to the Secretary, of (i) the aggregate number of new full-time jobs created and the substantial retention of the same throughout the calendar year that immediately precedes the fiscal year in which the grant is to be paid; (ii) the aggregate amount of the capital investment made and substantially retained as of the last day of the calendar year that immediately precedes the fiscal year in which the grant is to be paid; and (iii) progress toward meeting all other requirements described in the memorandum of understanding. The application and evidence shall be filed with the Secretary in person or by mail no later than April 1 each year following the calendar year in which the qualified entity meets such aggregate new full-time job requirements, aggregate capital investments, and other requirements described in the memorandum of understanding. Failure to meet the filing deadline shall result in a deferral of a scheduled grant payment set forth in subsection B. For filings by mail, the postmark cancellation shall govern the date of the filing determination.

D. The memorandum of understanding may provide that if a grant payment has been deferred for any reason, including the initial failure to meet the aggregate capital investment or the aggregate new full-time job requirements or any other requirement set forth in the memorandum of understanding, payment in a subsequent fiscal year for which such requirements have been met for the immediately preceding calendar year shall include both the deferred payment and the scheduled grant payment as provided in subsection B or that a proportional payment be made, based on the proportional share of the required capital investment, new additional full-time jobs, or other applicable criteria.

E. As a condition of receipt of a grant, a qualified entity shall make available to the Secretary or his designee for inspection upon his request relevant and applicable documents to determine whether the qualified entity has met the requirements for the receipt of grants as set forth in this section and the memorandum of understanding. The Comptroller shall not draw any warrants to issue checks for the grant program under this section without a specific appropriation for the same. All such documents appropriately identified by the qualified entity shall be considered confidential and proprietary.

**2. That a copy of the executed memorandum of understanding, as defined in § 59.1-284.24 of the Code of Virginia, shall be provided within 30 days after being executed by the Commonwealth to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance, with any analysis by the Virginia Economic Development Partnership Authority of the economic impact of the expected capital investment, new full-time jobs and other performance criteria described in the memorandum of understanding. Any subsequent changes to the memorandum of understanding shall be submitted to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance not later than 30 days after being executed by the Commonwealth.**