



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF AN EMERGENCY RULE

AGENCY: Development Office

TITLE-SERIES: 145-15

RULE TYPE: Legislative Amendment to Existing Rule: No

RULE NAME: Small Business Innovation Research and Small
Business Technology Transfer Matching Funds
Program

CITE STATUTORY AUTHORITY FOR PROMULGATING EMERGENCY RULE:

5B-8-2

IF THE EMERGENCY RULE WAS PROMULGATED TO COMPLY WITH A TIME LIMIT ESTABLISHED BY CODE OR
FEDERAL STATUTE OR REGULATION, CITE THE CODE PROVISION, FEDERAL STATUTE OR REGULATION AND TIME
LIMIT ESTABLISHED THEREIN:

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THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY THE
SECRETARY OF STATE OR THE 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST. THE FACTS AND
CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

During the 2019 Regular Legislative Session, the Legislature passed HB 2550 creating W. Va. Code 5B-8-1, et. seq. the Small Business Innovation Research and Small Business Technology Transfer Matching Funds Program. HB 2550 is in effect 06/07/2019. 5B-8-2 directs the Department of Commerce (WVDOC) to promulgate a legislative rule. Accordingly, WVDOC filed 145 CSR 15 with the Secretary of State's Office which recently completed the comment period. 145 CSR 15 is now pending before the Legislative Rule Making Review Committee. This notwithstanding, the WVDOC seeks to file 145 CSR 15 as an emergency rule pending passage of the legislative rule in 2020. Since W. Va. Code 5B-8-1, et. seq. is already in effect, the WVDOC is in the process of implementing the matching funds program without the benefit of an administrative rule. Moreover, WVDOC anticipates it will accept its first round of matching funds applications on 01/01/2020. Since these initial applications will be received prior to the enactment of 145 CSR 15 as a legislative rule, the WVDOC perceives the need to have 145 CSR 15 in place on 01/01/2020 as an emergency rule while the companion legislative rule is before the Legislature.

DOES THIS EMERGENCY RULE REPEAL A CURRENT RULE? No

HAS THE SAME OR SIMILAR EMERGENCY RULE PREVIOUSLY BEEN FILED AND OR EXPIRED? No

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The economic activity flowing from the SBIR/STTR programs generates substantial tax revenues, by an average factor of 1.4:1- i.e., an investment of \$500,000 will generate \$700,000 in additional tax revenue.

B. ECONOMIC IMPACT ON THE STATE OR ITS RESIDENTS:

The rule will have an economic impact on the State of West Virginia and its residents primarily in the area of commercialization, which will be measured by: (1) the extent to which projects reach the market; (2) the scale of commercialization (the amount of sales per project); (3) the acquisition of additional research funding; (4) the creation of new jobs; (5) an increased number of patents; (6) building sustainable innovative firms; and (7) a return on investment that is many times the cost of the program.

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2019 Increase/Decrease (use "-")	2020 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost		90,000.00	90,000.00
Personal Services		85,000.00	85,000.00
Current Expenses		0.00	0.00
Repairs and Alterations		0.00	0.00
Assets		0.00	0.00
Other		5,000.00	5,000.00
2. Estimated Total Revenues			

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

Implementation of the matching funds program and this emergency rule will require one new state employee to administer the program, as well as marketing funds to publicize the program's availability.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Wesley H White--By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 145
LEGISLATIVE RULE
WEST VIRGINIA DEPARTMENT OF COMMERCE

SERIES 15
SMALL BUSINESS INNOVATION RESEARCH AND SMALL BUSINESS TECHNOLOGY
TRANSFER MATCHING FUNDS PROGRAM

§145-15-1. General.

1.1. Scope. -- This legislative rule establishes the procedures and guidelines for determining the eligibility of a West Virginia business to participate in the West Virginia Small Business Innovation Research and Small Business Technology Transfer Matching Funds Program pursuant to W.Va. Code §5B-8-1.

1.2. Authority. -- W. Va. Code §5B-8-1.

1.3. Filing Date. -- _____.

1.4. Effective Date. -- _____.

1.5. Sunset Provision. This rule shall terminate and have no further force or effect upon the expiration of five (5) years from its effective date.

§145-15-2. Purpose.

2.1. The West Virginia Small Business Innovation Research and Small Business Technology Transfer Matching Funds Program is established. It shall be administered by the Department of Commerce. The purpose of this matching funds program is foster job creation and economic development in the state. The Department of Commerce may provide grants to eligible small businesses to prepare a competitive Phase I proposal, or match funds they receive from Small Business Innovation Research or Small Business Technology Transfer Phase I and Phase II awards. The Department of Commerce will pay the grants from the fund known as the "Entrepreneurship and Innovation Investment Fund" created pursuant to W.Va. Code §5B-2-16.

§145-15-3. Definitions.

3.1. "Department" means the West Virginia Department of Commerce.

3.2. "SBIR" means the Small Business Innovation Research Program enacted under the Small Business Innovation Development Act of 1982, Pub. L. 97-219, 15 U.S.C. §638.

3.3. "STTR" means the Small Business Technology Transfer Program enacted under the Small Business Technology Transfer Act of 1992, Pub. L. 102-564, 15 U.S.C. §638.

3.4. "Small business" means a corporation, partnership, limited liability company, statutory or common law business trust, sole proprietorship, or individual, operating a business for profit, which qualifies as a small business and otherwise meets the requirements of the SBIR or STTR programs.

3.5. "West Virginia-based business" means a business that has its principal place of business in this state.

3.6. “West Virginia SBIR/STTR matching funds program” means the program funded by the State of West Virginia, Department of Commerce which matches federal SBIR/STTR awards.

§145-15-4. Creating a Matching Program.

4.1. The West Virginia SBIR/STTR matching funds program shall be administered by the Department.

4.2. In order to foster job creation and economic development in the state, the Department may provide grants to eligible small businesses to prepare a competitive Phase I proposal, or to match funds they receive from Small Business Innovation Research or Small Business Technology Transfer Phase I and Phase II awards.

4.3. The Department will pay the grants from the fund known as the “Entrepreneurship and Innovation Investment Fund” created pursuant to §5B-2-16 of this code.

§145-15-5. Eligibility.

5.1. In order to be eligible for a grant under this article, a small business must satisfy all of the following conditions:

5.1.1. The small business must be a for-profit, West Virginia-based business;

5.1.2. For the Phase I and/or Phase II Matching program the small business must have received a SBIR/STTR Phase I or SBIR/STTR Phase II award from a participating federal agency in response to a specific federal solicitation.

5.1.2.a. To receive the full match for the Phase I award, the small business must also have submitted a final Phase I report, demonstrated that the sponsoring agency has an interest in a Phase II proposal, and submitted a Phase II proposal to the agency;

5.1.2.b. To receive the Phase II match, the small business must have submitted the final progress report to the funding agency;

5.1.3. The small business must satisfy all federal SBIR/STTR requirements;

5.1.4. The small business shall not receive concurrent funding support from other sources that duplicates the purpose of this article;

5.1.5. The small business must certify that at least 51 percent of the research described or to be described in the federal SBIR/STTR Phase II proposal will be conducted in this state and that the small business will remain a West Virginia-based business for the duration of the SBIR/STTR Phase II project; and

5.1.6. The small business must demonstrate its ability to conduct research in its SBIR/STTR Phase II proposal.

§145-15-6. Application Process.

6.1. The Department shall accept applications from West Virginia-based businesses for potential participation in the West Virginia SBIR/STTR matching funds program during the periods of January 1 – 31, May 1 – 31 and September 1 – 30 each year.

6.2. A small business shall apply, under oath, to the Department on forms prescribed by the Department that include at least the following:

6.2.1. The name of the small business, the form of business organization under which it is operated, and the names and addresses of the principals and management of the small business;

6.2.2. For matching awards, notice of award from the funding agency of the SBIR/STTR Phase I or Phase II award;

6.2.3. For matching awards, study section evaluation and comments; and

6.2.4. Any other information necessary for the Department to evaluate the application.

6.3. The Department shall review the application, determine whether the applicant satisfies the eligibility requirements, and determine whether to award matching grants.

§145-15-7. Grant terms.

7.1. The Department may award a “WV Phase Zero Grant” of \$2500 upon submission of a Phase I SBIR/STTR proposal or Fast track SBIR/STTR proposal.

7.1.1. The WV Phase Zero grant shall be remitted to the small business upon notification from the granting agency of the receipt of a submission for an SBIR/STTR Phase I or SBIR/STTR fast track application. The small business must provide satisfactory evidence to the Department of the notification of receipt.

7.1.2. A small business may receive only one WV Phase Zero Grant per year.

7.1.3. A small business may receive only one WV Phase Zero Grant with respect to each federal proposal submission; resubmissions of unsuccessful applications are not eligible.

7.1.4. Over its lifetime, a small business may receive a maximum of five WV Phase Zero awards.

7.1.5. A grant recipient may assign an award only upon the prior written consent of the Department.

7.2. The Department may award grants to match funds received by a small business through a SBIR/STTR Phase I proposal up to a maximum of \$100,000 paid in two remittances.

7.2.1. Fifty percent of the award under this subsection shall be remitted to the small business upon receipt of the SBIR/STTR Phase I award and an application to the Department for the funds.

7.2.2. The remaining fifty percent of the award under this subsection shall be remitted to the small business upon submission by the small business of:

7.2.2.a. A Phase II application to the funding agency;

7.2.2.b. Acceptance of the Phase I report by the funding agency; and

7.2.2.c. Application to the Department for the funds.

7.2.3. A small business may receive only one grant under this subsection per year.

7.2.4. A small business may receive only one grant under this subsection with respect to each federal proposal submission.

7.2.5. Over its lifetime, a small business may receive a maximum of five awards under this subsection.

7.2.6. A grant recipient may assign the award only upon the prior written consent of the Department.

7.3. The Department may award grants to match the funds received by a small business through a SBIR/STTR Phase II proposal up to a maximum of \$100,000 per year for up to two years, after application to the Department.

7.3.1. The second remittance may be made to the small business on the one-year anniversary of the first matching remittance under this subsection, if applicant applies for the funds with documentation from the agency indicating that the grant is to continue for a second year.

7.3.2. A small business may receive only one grant under this subsection per year.

7.3.3. A small business may receive only one award under this subsection with respect to each federal proposal submission.

7.3.4. Over its lifetime, a small business may receive a maximum of five awards under this subsection.

7.3.5. A grant recipient may assign the award only upon the prior written consent of the Department.