WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

7/29/2022 2:45:45 PM

Office of West Virginia
Secretary Of State

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY: Economic Development WV Department of

TITLE-SERIES: 145-15

RULE TYPE: Legislative

Amendment to Existing Rule: Yes

Repeal of existing rule: No

RULE NAME: 145-15 Small Business Innovation Research and Small Business Technology Transfer Matching Funds Program

PRIMARY CONTACT

NAME: James Bailey

ADDRESS: Building 3 Suite 800
1900 Kanawha Boulevard East
Charleston, WV 25305

EMAIL: james.m.bailey@wv.gov

PHONE NUMBER: 304-352-3961

CITE STATUTORY AUTHORITY: 5B-8-2

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

W.Va. Code 5B-8-2 grants the Department the authority to promulgate legislative rules governing the West Virginia Small Business Innovation Research and Small Business Technology Transfer Matching Funds Program.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/28/2022

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/28/2022

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

n/a

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

Legislative Rule 145-15 establishes the procedures and guidelines for determining the eligibility of a West Virginia business to participate in the West Virginia Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Matching Funds Program. Fund title is Entrepreneur & Innovation Investment (EII) Fund. The proposed amendment will change the fund award periods from 3 times per year to 2 times per year to allow time for the fund to be more equitably replenished.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

Currently, deposits into the EII Fund from the states p-card rebate program take place quarterly throughout the year in months March, June, September, and December. The current legislative rules established a triannual schedule for applications, with award applications being accepted in January, May, and September. The recent history of the fund deposits (4 times per year) and fund awards (3 times per year) causes the fund to be drained for one of the application periods, leaving an unfair imbalance in award distributions based on the time of year a small business requests an award consideration.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

N/A

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

N/A

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

N/A

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2022 Increase/Decrease (use "-")	2023 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
2. Estimated Total Revenues			

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

N/A

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

Yes

James Bailey -- 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 *et seq*.

1.2. Authority. -- W. Va. Code §5B-8-~~1~~2.

1.3. Filing Date. -- ~~May 6, 2020.~~

1.4. Effective Date. – ~~May 6, 2020.~~

1.5. Sunset Provision. This rule shall terminate and have no further force or effect upon ~~May 6, 2025~~ August 1, 2028.

§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~~ Economic Development. The purpose of this matching funds program is to foster job creation and economic development in the state. The Department of ~~Commerce~~ Economic Development 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~~ Economic Development 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~~ Economic Development.

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~~ Economic Development 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~~ and July 1 – 31 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 the 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.