SB78

197535-1

By Senators Orr, Allen and Whatley

RFD: Finance and Taxation Education

First Read: 05-MAR-19
SYNOPSIS: Under existing law, there are no economic incentives extended to Alabama businesses for qualified research expenses incurred by Alabama companies that spend funds and resources in-house, or pay Alabama research companies to conduct qualified research for new or improved products or services.

This bill would establish the Alabama Innovation Act that would provide for research and development enhancement grants to certain Alabama companies. The grant would be based on in-house research and contract research expenses conducted in Alabama and consortium research expenses for qualified research conducted in Alabama.

This bill would limit the research and development enhancement grants to no more than $8 million of grants in the 2020 fiscal year, and $5 million each fiscal year thereafter through the 2024 fiscal year; and no eligible company or business can be awarded more than 20% of the
The maximum amount awarded in a single fiscal year. The grants would be claimed on a first-come, first-served basis.

A BILL
TO BE ENTITLED
AN ACT

To enact the Alabama Innovation Act; to allow a research and development enhancement grant for qualified research expenses in Alabama; to provide that no more than $8 million of grants could be awarded for the 2020 fiscal year, and $5 million each fiscal year thereafter through the 2024 fiscal year, and no eligible company or business can be awarded more than 20% of the maximum amount awarded in a single fiscal year; to require that the grant only apply to research falling within certain industries; to direct the Alabama Department of Economic and Community Affairs to develop rules to administer the program; to establish the Alabama Research and Development Enhancement Fund; to provide the fund to receive appropriations from the legislature, or from the receipt of gifts, grants, or federal funds to be expended for the purpose of the program; to provide for the criteria under which grants are to be given; and to require an annual report on the progress of the program.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:
Section 1. This act shall be known as the "Alabama Innovation Act".

Section 2. The Legislature hereby finds and declares that the health, safety, and welfare of the people of this state are dependent upon the continued encouragement, development, growth, and expansion of the private sector within the state. The Legislature finds that expanding upon current research and development activities in the state would improve the employment opportunities, products and services available to the citizens of the state. Therefore, it is declared to be the purpose of this act to encourage new and continuing efforts to conduct research and development activities within this state.

Section 3. For the purpose of this act, the following words and phrases shall have the following meanings:

(a) ADECA. The Alabama Department of Economic and Community Affairs.

(b) ALABAMA RESEARCH ENTITY. One or more of the following:

(1) A public or private university in the state;

(2) A university research foundation affiliated with a public or private university in the state;

(3) A public two-year college in the state;

(4) A publicly-owned hospital in the state;

(5) An entity duly formed, domiciled or qualified to do business in the state that meets each of the following criteria:
a. Is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986, as amended;
b. Is predominantly engaged in research and non-commercial development activities undertaken for the purpose of discovering information that is technological or biotechnological in nature, involves a process of experimentation, and the application of which is intended to be used in the development of a new or improved product, service or treatment;
c. Has its headquarters and principal place of business in the state; and
d. Has, or is anticipated to have, at least 75 percent of its property and payroll in Alabama, using the property and payroll factor calculations found in Title 40.

(b) APPROVED ACTIVITY. The conduct of an activity that is predominantly any one or more of the following:

(1) Described by NAICS Code 1133, 115111, 2121, 22111, 221330, 31 (other than 311811), 32, 33, 423, 424, 482, 4862, 48691, 48699, 48819, 4882, 4883 (other than 48833), 493, 511, 5121 (other than 51213), 51221, 517, 518 (without regard to the premise that data processing and related services be performed in conjunction with a third party), 51913, 52232, 54133 (if predominantly in furtherance of another activity described in this article), 54134 (if predominantly in furtherance of another activity described in this article), 54138, 5415, 541614, 5417, 55 (if not for the production of
electricity), 561422 (other than establishments that originate telephone calls), 562213, 56291, 56292, 611512, 927 or 92811.

(2) The production of biofuel as such term is defined in Section 2-2-90(c)(2).

(3) A target of the state’s economic development efforts pursuant to either of the following:

a. The Accelerate Alabama Strategic Economic Development Plan adopted in January 2012 by the Alabama Economic Development Alliance, created by Executive Order Number 21 of the Governor on July 18, 2011, or any amended version or successor document thereto or

b. A type listed in a regulation adopted by the Department of Commerce.

Notwithstanding the foregoing, an approved activity shall not predominantly include farming activities involving trees, animals or crops or the retail sale of tangible personal property or services. This provision shall not be deemed to exclude customer service centers, call centers or headquarters otherwise allowed as an approved activity.

(c) CONSORTIUM RESEARCH EXPENSES. Any amount paid or incurred by the taxpayer to any Alabama research entity for qualified research, but not including any expenses for research activities performed outside Alabama.

(d) CONTRACT RESEARCH EXPENSES. Any amount paid or incurred by the taxpayer to any person (other than an employee of the taxpayer) for qualified research, but not including any of the following:
(1) Consortium research expenses; or

(2) Expenses for research activities performed outside Alabama.

(e) IN-HOUSE RESEARCH EXPENSES. The meaning given in 26 U.S.C. § 41(b)(2), but not including wages paid or incurred to employees residing outside Alabama.

(f) NAICS CODE. Any sector, subsector, industry group, industry or national industry of the 2012 North American Industry Classification System, or any similar classification system developed in conjunction with the United States Department of Commerce or Office of Management and Budget.

(g) QUALIFIED RESEARCH. The meaning given in 26 U.S.C. § 41(d), if conducted in Alabama in pursuit of an approved activity. In applying any terms in 26 U.S.C. § 41, "qualified research" shall have the meaning given herein.

Section 4. (a) The Director of the ADECA is authorized to establish and administer the research and development enhancement grant program for the purpose of encouraging new and continuing efforts to conduct research and development activities within Alabama. Within 90 days of the effective date of this act, the director shall promulgate rules and policies to administer the program and begin to accept applications for grants, and shall promulgate such rules and regulations as may be necessary to meet the future needs of the grant program.
(b) The program shall be administered pursuant to policies developed by ADECA in compliance with this act. The policies shall provide for the awarding of grants to business enterprises that have qualified research expenses in Alabama in a taxable year exceeding a base amount, provided that the business enterprise for the same taxable year claims a research credit under Section 41 or the Internal Revenue Code of 1986, as amended.

(c) There is hereby created the Alabama Research and Development Enhancement Fund in the State Treasury. The fund is subject to appropriations by the legislature and gifts, grants, and other donations received by ADECA for the research and development grant program or fund. ADECA may not spend appropriations for the program for purposes other than those listed in this section. Any monies appropriated to ADECA for research and development grants that are unspent at the end of a fiscal year shall be carried over for use by the program in the next fiscal year. ADECA shall develop rules ensuring that expenses incurred to administer the program must not exceed three percent (3%) of the total amount appropriated for the program in any fiscal year. Moneys in the fund shall be invested by the State Treasurer for the sole benefit of the fund.

(d) Individual grants awarded by ADECA under this section may only be awarded for qualified research expenses and may not exceed the lesser of: (1) 20% of the total grant
funds awarded in a single fiscal year or (2) an amount equal
to the sum of the following:

(1) 10 percent of the following:
   a. In-house research expenses and contract research
      expenses for qualified research conducted in Alabama during
      the taxable year preceding the fiscal year for which grant
      funds are being awarded, minus
   b. Fifty percent of the in-house research expenses
      and contract research expenses conducted in Alabama, on
      average, over the 3 taxable years preceding the taxable year
      for which the grant amount is being determined.

(2) 25 percent of the following:
   a. Consortium research expenses for qualified
      research conducted in Alabama during the taxable year
      preceding the fiscal year for which grant funds are being
      awarded, minus
   b. Fifty percent of the consortium research expenses
      conducted in Alabama, on average, over the 3 taxable years
      preceding the taxable year for which the grant amount is being
      determined.

Subject to such limitations, grants shall be awarded
pursuant to criteria established by ADECA, with priority given
to qualified research expenditures supporting an approved
activity as defined in Section 3 of this act.

(e) The first annual commencement date to submit
grant applications shall be within sixty days of the effective
date of this act, and shall be March 1 in each subsequent
year. ADECA shall accept applications within a 150-day grant window after the annual commencement date. Applications for eligible expenses will be evaluated according to a scoring system developed by ADECA that incorporates the priorities listed in this section, with grant awards published within ninety days after expiration of the filing window.

Section 5. (a) There is created the Alabama Research and Development Enhancement Oversight Committee. The oversight committee shall consist of the Chair of the House Ways and Means Education Committee or designee, the Chair of the Senate Finance and Taxation Education Committee or designee, two members appointed by the Speaker of the House of Representatives, two members appointed by the President Pro Tempore of the Senate, and the Director of ADECA or his or her designee. The oversight committee shall be charged with meeting at least annually and providing general oversight of the implementation and recommending further statutory changes to promote research and development within Alabama.

(b) The committee shall reflect the racial, gender, geographic, urban/rural, and economic diversity of the state.

(c) For any year in which grants are distributed under the program, ADECA shall produce a quarterly report on the status of grants under the program to the Oversight Committee, including progress toward increased research and development activities in Alabama. The report shall also be published on ADECA's website. Within 12 months of the effective date of this act, ADECA shall produce a report on
the increased research and development activities supported by
grant funds.  

Section 6. The amount of research and development
enhancement grants awarded by ADECA shall not exceed $8
million for the 2020 fiscal year, and $5 million each fiscal
year thereafter through the 2024 fiscal year; and no taxpayer
shall receive a research and development enhancement grant of
more than 20% of the maximum amount awarded in a single fiscal
year. The grants shall be allocated among various taxpayers
using the procedures in this section.

(a) Each taxpayer who wishes to apply for a grant
shall file an application with the department showing the
amount of tax credit which the taxpayer expects in good faith
to qualify for during the applicable fiscal year. No
application shall show an expected claim in excess of 20% of
the maximum amount to be awarded in a single fiscal year.

(b) As applications are submitted, the department
shall approve any the department deems sufficient, until the
total approved applications represent the total available
grant funds for the applicable fiscal year. All applications
received on the day that the total for the applicable fiscal
year is reached shall receive approval for a pro rata share of
the credits available at the start of that day. To the extent
that the applications are not approved, the portion not
approved shall be conditionally denied by the department.
Taxpayers may continue to submit applications after the total
for the applicable tax year is reached, and applications that
the department deems sufficient shall be conditionally denied
but maintained in the order received.

   (c) If grant funds for the corresponding fiscal year
are returned for any reason or if additional grant funds
become available, the department shall approve, in the order
they were received, the applications that were conditionally
denied until the approved applications represent total of
available grant funds for the applicable fiscal year and
timely notify benefiting taxpayers.

   Section 7. The grant program established under this
act shall be effective for the fiscal year ending September
30, 2020 and shall continue through the fiscal year ending
September 30, 2024, unless extended by act of the Legislature.

   Section 8. All laws or parts of laws which conflict
with this act are repealed.

   Section 9. This act shall become effective
immediately following its passage and approval by the
Governor, or its otherwise becoming law.