Department of Legislative Services

Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 239 (The President, *et al.*) (By Request - Administration)
Finance and Budget and Taxation Economic Matters and Appropriations

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Economic Development - Maryland Technology Development Corporation - Maryland Innovation Initiative

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This Administration bill establishes the Maryland Innovation Initiative and the Maryland Innovation Initiative Fund (MIIF) in the Maryland Technology Development Corporation (TEDCO) to promote technology transfer from Maryland's public and private nonprofit research institutions to the private sector. The initiative is authorized to provide grant funding to qualifying entities under specified conditions. In addition, the bill requires the University System of Maryland (USM) and Morgan State University (MSU) to undertake qualified "high impact development activities" and requires the Boards of Regents to adopt policies related to the establishment of high impact development activities. Finally, the bill alters the review and approval process for certain types of higher education contracts by the Board of Public Works.

The bill takes effect July 1, 2012.

Fiscal Summary

State Effect: General fund expenditures increase significantly, likely between $5 million and $10 million, in FY 2013 or later if the Governor includes an appropriation to capitalize MIIF in the State budget. Special fund revenues for MIIF increase due to any capitalization and by $800,000 in FY 2013 and thereafter. This assumes that the five universities eligible to join the initiative choose to participate in the initiative by contributing the required annual amount. Special fund expenditures increase correspondingly as the initiative awards grant funding under the bill. The universities eligible to join the initiative can meet the bill's requirements with existing budgeted resources for technology transfers. TEDCO can provide administrative support for the initiative with existing budgeted resources. The USM and MSU Boards of Regents can meet the bill's administrative and reporting requirements with existing budgeted resources. The changes to State procurement law are not anticipated to affect State finances.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
SF Revenue	$800,000	$800,000	$800,000	$800,000	$800,000
GF Expenditure	-	-	-	-	-
SF Expenditure	$800,000	$800,000	$800,000	$800,000	$800,000
Higher Ed Exp.	$600,000	$600,000	$600,000	$600,000	$600,000
Net Effect	($600,000)	($600,000)	($600,000)	($600,000)	($600,000)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: The Administration has determined that this bill has minimal or no impact on small business (attached). Legislative Services disagrees with this assessment as discussed below. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary:

Maryland Innovation Initiative and Fund

The initiative consists of a State government official and two members of the private sector with experience commercializing technology in the State, each of whom are not affiliated with Maryland higher education, as well as one representative from each of five specified public or private nonprofit research universities located in the State (Johns Hopkins University; MSU; University of Maryland, College Park; University of Maryland Baltimore County (UMBC); and University of Maryland, Baltimore). To qualify for participation in the initiative, the University of Maryland, College Park; Johns Hopkins University; and the University of Maryland, Baltimore must each provide at least $200,000 annually to the initiative to carry out the initiative's established purpose, which is generally to promote the commercialization of research conducted by universities in the State through strategic partnerships. MSU and UMBC must each provide at least $100,000 annually to the initiative.

TEDCO will administer MIIF, which may be funded by (1) appropriations as provided in the State budget; (2) contributions by qualifying universities; (3) grants or funds from federal laboratories located in the State; (4) interest or other income earned on the investment of money in the fund; and (5) any other money accepted for the benefit of the initiative. MIIF is added to the list of special funds excluded from the requirement that interest earned be credited to the general fund. Funds may only be used to award grants to promote the commercialization of pertinent research and to pay the necessary administrative costs of the initiative.

The initiative may (1) provide grant funding to a qualifying university, qualifying university-based entrepreneur, or other start-up entity to promote the commercialization of technology developed in whole or in part by a qualifying university; (2) pursue grants, other funds, and in-kind contributions for the initiative or its qualifying universities; (3) develop and implement guidelines for technology transfer; and (4) identify projects at qualifying universities that may be viable for commercialization.

Grant funding must be awarded (1) to support pre-commercial research on intellectual property; (2) to defray costs of evaluating the feasibility of a technology becoming commercialized through a start-up company; (3) to defray the direct costs of developing early-stage technology through a start-up company; (4) to assess intellectual property issues, including licensing and patents; or (5) for any other costs that the initiative's participating members determine are appropriate, given the initiative's purpose. Only qualifying universities may submit proposals for grant funding from the initiative.

The initiative may establish a committee of topic-area experts under service contracts to review, evaluate, rate, and recommend proposals for funding from the initiative. A committee member is prohibited from receiving funding from the initiative.

TEDCO must include, as part of its annual report to the Governor and General Assembly, a detailed description of technology transfer actions or projects for which the initiative provided funding; the amount, source, and recipients of funding awards; and the commercial value of any technology transferred to the commercial industry.

High Impact Economic Development Activity

"High impact economic development activity" means an initiative, transaction, or other undertaking by USM or one of its constituent institutions, or MSU, to create or facilitate (1) 20 or more new jobs in the State; (2) the award or completion of at least $1 million in *externally* funded research or other projects; (3) the establishment or relocation of one or more new companies doing business in the State; (4) the production of at least $1 million of annual gross revenue; (5) the licensing and potential commercialization of a promising new technology or product; or (6) an academic program to meet workforce demand in a documented labor shortage field.

USM and MSU must undertake high impact economic development activities that support job creation and workforce development, technology transfer, commercialization and entrepreneurship, and increased sponsored research funding. An institution in the system may establish, invest in, finance, or operate a corporation, foundation, consortium, or other entity that is intended to support high impact economic development activity. Subject to certain restrictions, an official or employee of a public institution of higher education may be a director, official, or employee of an entity intended to support high impact economic development activity.

State procurement law (State Finance and Procurement, Division II) generally does not apply to transactions between an entity established, financed, or operated under the bill, and the institution or consortium which established, financed, or operated it. The USM and MSU Boards of Regents are responsible for developing policies and procedures which require recognition of an entity by the appropriate board, an annual independent audit of the entity, and adequate ethical and business practice standards.

The USM and MSU Boards of Regents are responsible for developing policies and procedures governing the establishment of high impact economic development entities within the scope of § 5-310 or § 10-305 of the State Finance and Procurement Article, which govern the sale or transfer of personal or real property; under the bill, these will also apply to intellectual property. Further, the boards are responsible for administering the review and comment process required by §§ 5-310 and 10-305 by including in that process specified legislative committees and units of State government.

On or before October 1 of each year, the boards must report to the Board of Public Works (BPW), the Senate Budget and Taxation Committee, the Senate Finance Committee, the House Appropriations Committee, and the House Economic Matters Committee on the preceding fiscal year's high impact development activities.

Board of Public Works

The bill raises, from $500,000 to $1 million, the minimum value for which any contract for services or capital improvement by USM, MSU, or St. Mary's College of Maryland (SMCM) must be submitted to BPW for review and approval. In addition, dispositions of personal property, except those that were purchased with the proceeds of a general obligation loan, in excess of $1 million must be reviewed and approved by BPW.

Current Law: USM, MSU, and SMCM are exempt from most provisions of State procurement law. However, service contracts by USM, MSU, and SMCM with a value that exceeds $500,000 require approval from BPW. The procurements by these entities that are exempt from procurement law must nonetheless be made under procedures that promote the purposes underlying State procurement law.

The USM Board of Regents is responsible for the management of USM, with the power to conduct or maintain any institutions, schools, or departments in the university system. The USM board appoints a chancellor who serves as the chief executive officer of the university system and the chief of staff for the board. The MSU Board of Regents is responsible for the management of MSU. The MSU board appoints the president of MSU. The USM and MSU boards may establish, invest in, finance, and operate business entities when the board finds that doing so would further one or more goals of USM or MSU. A business entity established, invested in, financed, or operated by the board is not considered a State agency, instrumentality of the State, or a unit of the Executive

Branch. In addition, the business entity's financial obligations and liabilities are not a debt or obligation of the State, USM, or MSU. The boards must submit an annual report to the Governor and the General Assembly on (1) the business entities established in the prior year; (2) funds invested in and financing provided to the entities; (3) ownership interests in the entities; and (4) the current status of the entities. The boards may apply for, accept, and spend any gift or grant from the federal government, any foundation, or any other person.

Background: TEDCO was launched in 1998 to help commercialize the results of scientific research and development conducted by higher education institutions, federal laboratories, and private-sector organizations. TEDCO also aims to promote new research activity and investments that lead to business development in Maryland. TEDCO provides nonequity investments to early stage technology businesses, and it funds development and patenting of new technologies at research universities. TEDCO also develops linkages with federal research facilities in the State and helps companies pursue research funds from federal and other sources. Colleges and universities may assign to TEDCO or its subsidiaries intellectual property and other resources to assist in its development and activities.

In general, USM policies governing the ownership of intellectual property rights confer ownership to a university if the intellectual property was created (1) within the scope of employment of a person with the university; (2) using university resources; (3) under a sponsored research agreement; or (4) under written agreements. The university owns all rights in copyright for work produced by nonfaculty personnel within the scope of employment. The university must share revenues received from copyright materials with the creator, *except* for nonfaculty personnel within the scope of employment, for which there is no obligation to share revenue, though the university may choose to share up to 50%.

TEDCO administers a number of similar programs to the initiative, with many of the same goals. For example, the Maryland Technology Transfer and Commercialization Fund awards approximately $1.5 million annually in up to $75,000 reimbursable grants for the initiation of technology transfer projects that involve collaboration between a Maryland company and any federal laboratory or academic research institution in Maryland. Similar to the bill, the funds are to be used to defray direct costs of further developing early stage technology. The University Technology Development Fund provides up to $50,000 for proof-of-concept studies or patent extension research on Maryland university-owned technologies. Further, the TechStart Program provides up to $15,000 to further evaluate the feasibility of a technology from a Maryland university or federal lab to be the basis of a start-up company, and funds are to be used to determine the viability of a new company formed around the technology. The Stem Cell Research Fund within TEDCO awards approximately $10.4 million in grants annually.

State Fiscal Effect: The fiscal 2013 State budget does not include an appropriation to MIIF. Based on the funding levels of existing TEDCO grant programs, MIIF may receive a general fund appropriation of between $1.5 million and $10 million annually. The five eligible universities must contribute a total of at least $800,000 annually to MIIF to participate in the initiative. TEDCO has advised that it can handle administrative support for the initiative with existing resources. To the extent the initiative hires its own staff, additional costs will be incurred.

Small Business Effect: Authorized recipients of grant funding from the initiative include start-ups and university-based entrepreneurs, which are generally small businesses. There is a potential meaningful small business impact to the extent these entities receive grant funding from the initiative.

Additional Comments: In addition, DLS notes that the high impact economic activity within the scope of § 5-310 or § 10-305 of the State Finance and Procurement Article refers to real and personal property, whereas research and technology developed at State universities is generally considered intellectual property.

Additional Information

Prior Introductions: None.

Cross File: HB 442 (The Speaker, *et al.*) (By Request - Administration) - Economic Matters and Appropriations.

Information Source(s): Department of Budget and Management; Department of General Services; Department of Business and Economic Development; Department of Natural Resources; Maryland Department of the Environment; Maryland Department of Planning; Maryland Higher Education Commission; Maryland Technology Development Corporation; Morgan State University, University System of Maryland; Department of Legislative Services

Fiscal Note History: First Reader - February 6, 2012
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Economic Development - Maryland Technology Development Corporation - Maryland Innovation Initiative

BILL NUMBER: SB 239

PREPARED BY: DBED

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

__X__WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

___ WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.