

APA1
07/04

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control No. 281 Department or Agency: Department of Commerce

Rule No. 281-4-1

Rule Title: The Alabama Innovation Fund

New Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? NO

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? NO

Is there another, less restrictive method of regulation available that could adequately protect the public? NO

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? NO

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? N/A

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? YES

Does the proposed rule have an economic impact? YES

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer Linda P. Swann

Linda P. Swann, Assistant Secretary of Commerce

Date 6/19/2012

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07/04

ALABAMA INNOVATION FUND

DEPARTMENT OF COMMERCE

RULE NO. & TITLE: 281-X-4 The Alabama Innovation Fund

INTENDED ACTION: Adopt New Rules.

SUBSTANCE OF PROPOSED ACTION: The Department of Commerce proposes to adopt rules for the administration of the Alabama Innovation Fund. The purpose of this fund is to maximize the use of the State's economic development resources by leveraging annual research and development expenditures by public universities within the State to generate resources which can be used to support economic development initiatives.

TIME PLACE, MANNER OF PRESENTING VIEWS: All interested parties may submit their views in writing to the Department of Commerce, 401 Adams Avenue, Suite 170; Montgomery, AL 36130; Attention: Secretary of Commerce 36130, at any time during the thirty-five (35) day period following the publication of the notice.


FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

August 6, 2012

CONTACT PERSON AT AGENCY:

Greg Canfield
Secretary of Commerce
401 Adams Avenue
Montgomery, AL 36130
(334) 242-0421

William A. McCrary
RSA Union Building
100 North Union Street, Suite 134
Montgomery, AL 36130-2631
(334) 242-7133



Linda P. Swann
Assistant Secretary of Commerce

6/19/2012
Date

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ECONOMIC IMPACT STATEMENT
FOR APA RULE
(Section 412-22-3(f))

Control No. 281 Department or Agency Department of Commerce

Rule No: 281-4-1

Rule Title: The Alabama Innovation Fund

New Amend Repeal Adopt by Reference

This rule has no economic impact.

This rule has an economic impact, as explained below:

1. NEED/EXPECTED BENEFIT OF RULE:
These Rules are designed to allow the Alabama Department of Commerce to administer the Alabama Innovation Fund. Proper administration of the fund will allow the maximization of the use of the State's economic development resources through leveraging annual research and development expenditures by public universities within the State to generate resources which can be used to support economic development initiatives.
2. COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE: These Rules are designed to distribute available research and development funds in an effective manner thereby putting financial resources in the hands of those public universities with a proven research and development capability.
3. EFFECT OF THIS RULE ON COMPETITION:
Forty percent (40%) of the funds will be awarded on through a merit based competitive process thus encouraging competition between public universities for available research and development funds.
4. EFFECT OF THIS RULE ON COST-OF-LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:
N/A
5. EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED: It is expected that these funds will stimulate research and development and thereby promote economic development in the geographical areas both where the funds are employed and in the State as a whole.
6. SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE: Implementation and enforcement of these Rules will be funded through appropriations from the State's General Fund.

7. THE SHORT TERM/LONG TERM ECONOMIC IMPACT OF THIS RULE ON AFFECTED PERSONS, INCLUDING ANALYSIS OF PERSONS WHO WILL BEAR THE COSTS AND THOSE WHO WILL BENEFIT FROM THE RULE: Both on a short term and long term basis, it is expected that these funds will stimulate research and development and thereby promote economic development and job creation within the geographical areas both where the funds are employed and in the State as a whole.
8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND BURDENS OF THE RULE INCLUDING QUALITATIVE / QUANTITATIVE BENEFITS AND BURDEN COMPARISON:
It is unknown how many jobs will be created by the fund and the administration of these Rules.
9. THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:
N/A
10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED:
N/A

**Additional pages may be used if needed.

Jenna P. Swain
Asst. Secretary of
Commerce
June 19, 2012

ALABAMA DEPARTMENT OF COMMERCE
ADMINISTRATIVE CODE
CHAPTER 281-4-1 THE ALABAMA INNOVATION FUND

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"NEW CHAPTER"

ALABAMA ADMINISTRATIVE CODE
ALABAMA DEVELOPMENT OFFICE, ADMINISTRATIVE CODE
CHAPTER 281-4-1, THE ALABAMA INNOVATION FUND

Chapter 4-1-.01

281-4-1-.01 Definitions.

As used in this chapter, the following terms shall have the following meanings:

- (1) "**ACCELERATE ALABAMA**" means the economic development strategic plan for the State of Alabama developed by the Alabama Economic Development Alliance created by Executive Order No. 21 issued by Governor Robert Bentley..
- (2) "**COMMERCE**" means the Alabama Department of Commerce.
- (3) "**ALABAMA INNOVATION FUND**" means that fund described in Section 281-X-3-01 of the Alabama Administrative Code below.
- (4) "**APPLICANT**" means a Public University which submits a qualifying Application.
- (5) "**APPLICATION**" means an Application for research and development from the Alabama Innovation Fund.
- (6) "**EPSCoR**" means the Experimental Program to Stimulate Competitive Research.
- (7) "**GENERALLY ACCEPTED ACCOUNTING PRINCIPLES**" means those conventions, rules and procedures that constitute accepted accounting practices in the United States, as determined by the Financial Accounting Standards Board and any successor organization thereto that is charged with the promulgation of such conventions, rules and procedures
- (8) "**PERSON**" means a natural person or other entity, including without limitation a corporation, general or limited partnership, trust or limited liability company.
- (9) "**PROJECT**" means a research and development project for which funding has been requested pursuant to this chapter.
- (10) "**REASONABLE**" means fair, proper, just or suitable under the circumstances.
- (11) "**PUBLIC UNIVERSITY**" means a public four year university established by the State and operating within Alabama.
- (12) "**SECRETARY**" means the Secretary of Commerce.
- (13) "**STATE**" means the State of Alabama.

Author: Alabama Department of Commerce

Statutory Authority: Code of Alabama, 1975 as amended, §41-9-202

History: New Rule

§41-4-1-02 The Alabama Innovation Fund

As part of the implementation of Accelerate Alabama, the State of Alabama has created the Alabama Innovation Fund. The purpose of this fund is to maximize the use of the State's economic development resources by leveraging annual research and development expenditures by Public Universities within the State to generate resources which can be used to support economic development initiatives. The Alabama Innovation Fund shall support and operate two (2) distinct programs. They are:

(1) The Renewal Program Sixty percent (60%) of the annual funding available to the Alabama Innovation Fund, net of expenses, shall be used to fund the Renewal Program. These funds shall be distributed through grants to Public Universities which submit an Application under this chapter. The allocation to each Public University which makes application shall be based on each Public University's federally financed research and development expenditures as reported by the National Science Foundation in its publication entitled "Surveys of Research and Development Expenditures at Colleges and Universities". Each Public University's expenditures as reported by the National Science Foundation over the immediately preceding three (3) fiscal years shall be used to determine such Public University's respective allocation. Each Public University submitting an Application shall receive an amount that reflects that institution's percentage of such expenditures in relation to expenditures reported by the National Science Foundation to all Public Universities which make an Application.

(2) The Research Program Forty percent (40%) of the annual funding available to the Alabama Innovation Fund, net of expenses, shall be used to fund the Research Program. These funds shall be distributed, in keeping with the State's goals to stimulate economic development as set out in Accelerate Alabama, to Public Universities who submit an Application through a competitive process described in this chapter. The criteria used in making awards shall include without limitation:

The likelihood of a Project to create patentable or other proprietary innovative technology capable of successful commercialization.

The likelihood of a Project to stimulate further research and development within the State.

The likelihood of a Project to contribute directly or indirectly to the creation of additional jobs within the State.

Expertise of the research team in fields which would contribute to the success of a Project.

Participation by the research team in past projects of a similar nature which have led to successful commercialization and related job creation.

The amount of useful technological, economic, human and intellectual property resources available to the research team, and

The likelihood of the Project to contribute in positive way to the State's economy.

Author: Alabama Department of Commerce

Statutory Authority: Code of Alabama, 1975 as amended, §41-9-202

History: New Rule

231-4-1-.03 Application.

In order to qualify for a receipt of funds under either the Renewal Program or Research Program each Public University shall submit an Application annually in the form prescribed by the Secretary in the manner set out below:

(1) Applications shall be signed and certified as to accuracy by a senior official of each Applicant. Each Application shall be submitted by hand or by certified mail to Alabama Department of Commerce, Alabama Center for Commerce, 401 Adams Avenue, Suite 670 Montgomery, Alabama 36104, Attention: Secretary of Commerce. Applications shall be submitted no later than 9:00 a.m. (Montgomery, Alabama time) on May 31 of each year.

(2) An Application shall be considered received by COMMERCE when COMMERCE receives three (3) originals of the Application, each of which is complete in all material respects. COMMERCE shall stamp Applications received by COMMERCE with the date and time of receipt by COMMERCE. Late applications and those applications found by COMMERCE to be materially incomplete shall be considered as not having been filed with COMMERCE and shall be returned by COMMERCE to the applicant by mail in which case the COMMERCE shall have no further obligation to provide additional notices to the applicant.

(3) A completed Application shall include the following:

- (i) The name of the Public University making Application and the name and full contact information of the Applicant's contact for purposes of that Application.
- (ii) A detailed description of each Project, its goals and estimated total cost of each Project for which funds requested from the Renewal Program and Research Program respectively shall be used.
- (iii) A description of other funding available for the Applicant's respective Projects and the source of that funding.
- (iv) The names and a detailed description and supporting documentation of the experience of each natural person who will direct and/or conduct each respective project for which funding is sought under the Renewal and Research Programs respectively. Such descriptions and supporting documents shall be certified as accurate by each natural person listed the following and shall include the following:
 - (A) A detailed resume with a listing of references including full contact information for each reference; and
 - (B) A listing of all professional certifications and degrees held by each natural person who will direct and/or conduct each respective project for which funding is sought or similar projects. A statement shall be included as to whether each professional certification is active and in good standing.
- (v) A description of similar successful projects directed or conducted by the Applicant.

- (vi) The attainment to date of goals related on Projects for which funding is sought by the Applicant.
- (vii) The number of and a description of other non confidential research and development projects in which the Applicant is currently involved.
- (viii) The annual dollar amount of expenditures as reported by the National Science Foundation in the immediately preceding three (3) fiscal years.
- (ix) A listing and description of any patents, copyrights, trademarks or other intellectual property rights held by the Applicant which are related to the scope of work of the Project or the Applicant otherwise feels would be helpful in evaluating its Application (inclusive of any applicable identifying numbers, governmental agency of issuance, and geographic region covered). Indicate whether or not a member of the research team developed the underlying technology and how, if at all, such intellectual property rights could be expected to contribute to the success of the Project.
- (x) An estimate of the number of jobs that Applicant estimates to be created by the successful completion of the Applicant's Project and an estimated timetable for and wage level of such jobs. Please provide any supporting data on which your projections are based.
- (xi) If the Project is anticipated to produce proprietary intellectual property rights, give an estimate, if practical to do so, of the value of licensing fees that could be obtained from such rights. Please provide any supporting data on which these projections are based.
- (xii) List any information that would help Commerce understand how the Project would contribute to achieving the goals of Accelerate Alabama and the specific goals outlined in Section 281-X-2-.04(2).
- (xiii) An affidavit and such other documentation as is deemed necessary by COMMERCE to establish that the Company is in compliance with all applicable federal, state and local laws, regulations and ordinances.

(4) Any false, inaccurate, or misleading information provided in an Application submitted to COMMERCE may be grounds for rejection of an Application and denial of further consideration.

(5) Whenever any material information that an Applicant supplied in its Application has become inaccurate or obsolete, the Applicant shall immediately notify COMMERCE in writing and file an amended Application, including originally executed signature pages. Such amended Application shall be submitted within thirty (30) days of the information becoming inaccurate or obsolete during the Application process. Such amended Applications shall be filed in the same manner as the original Application.

(6) COMMERCE reserves the right to determine what information is material regarding the completion, execution and whether the filing of an amended Application or a notification is required under this section. COMMERCE may request any such additional information from the Applicant as COMMERCE deems necessary to appropriately review an Application, amended Application or notification.

(7) In the event that an incomplete Application is submitted that is not considered materially complete by COMMERCE or additional information is requested by COMMERCE, COMMERCE shall notify the Applicant within a reasonable time after receipt of the Application. If an incomplete Application is not completed or the additional information is not supplied within a reasonable time, then COMMERCE may, in its discretion, deem the Application to not have been filed with the COMMERCE and return the Application to the Applicant by mail in which case the COMMERCE shall have no further obligation to provide additional notices to the Applicant.

Author: Alabama Department of Commerce

Statutory Authority: Code of Alabama, 1975 as amended, §41-9-202

History: New Rule

281-4-1-.04 Application Review.

COMMERCE shall review each Application. COMMERCE may retain, and pay reasonable fees and expenses from funds of the Alabama Innovation Fund, a fund administrator (which shall perform those duties as prescribed by the Secretary), EPSCoR or another consultant or consultants and/or panel members to assist in the review of Applications, verification of information contained in Applications and development of more detailed criteria upon which grants from the Research Program may be made and evaluated. In order to gain a broader perspective of the relative value of competing research and development opportunities at Public Universities the Secretary may appoint panel members who will be asked for recommendations as to additional criteria which may be employed in determining how various Projects should be ranked. Such panel may, if so requested, also assist COMMERCE in the evaluation and ranking of Projects. A final decision as to the allocation of funds, if any, made to a particular Applicant shall be made by the Governor upon the recommendation of the Secretary.

Author: Alabama Department of Commerce

Statutory Authority: Code of Alabama, 1975 as amended, §41-9-202

History: New Rule

281-4-1-.05 Distributions.

If the total appropriation to the Alabama Innovation Fund in any fiscal year of the State, net of proration, is greater than five million and no hundredths dollars (\$5,000,000.00), distributions of funds to qualifying Applicants under either the Renewal Program or Research Program shall be made once per quarter on dates chosen at the discretion of COMMERCE. If the total appropriation to the Alabama Innovation Fund in any fiscal year of the State, net of proration, is equal to or less than five million and no hundredths dollars (\$5,000,000.00), distributions of funds to qualifying Applicants under either the Renewal Program or Research Program shall be made once per year on a date chosen at the discretion of COMMERCE.

Author: Alabama Department of Commerce

Statutory Authority: Code of Alabama, 1975 as amended, §41-9-202

History: New Rule

281-4-1-.06 Expenses.

COMMERCE may make expenditures as it deems Reasonable for which the Alabama Innovation Fund was created. In addition, COMMERCE may retain two percent (2%) of total funds received by the Alabama Innovation Fund to offset its internal expenses and overhead in administering the Alabama Innovation Fund.

Author: Alabama Department of Commerce

Statutory Authority: Code of Alabama, 1975 as amended, §41-9-202

History: New Rule

281-4-1-.07 Reports.

No later than April 30 of each year any Applicant receiving grants under this chapter during the previous fiscal year shall submit a report in a form satisfactory to COMMERCE detailing the accomplishments and summarizing the expenditures during said fiscal year of each of the Applicant's Projects. Financial information provided shall be prepared and reported using Generally Accepted Accounting Principles. The Secretary may in his [or her] reasonable discretion require audits of any Project of any Applicant. By filing an Application each Public University agrees to make such reports on a timely basis and submit to audit as required by the Secretary.

Author: Alabama Department of Commerce

Statutory Authority: Code of Alabama, 1975 as amended, §41-9-202

History: New Rule