



Montgomery
County Council

Committee: PHED

Committee Review: At a future date

Staff: Christine M.H. Wellons, Legislative Attorney

Purpose: To introduce agenda item – no vote expected

Keywords: #EconomicDevelopmentAssistance

AGENDA ITEM #5A

December 3, 2019

Introduction

SUBJECT

Bill 37-19, Economic Development Fund – Use of Fund and Remedies for Noncompliance

Lead Sponsor: Councilmembers Glass

Co-Sponsor: Councilmember Riemer

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- N/A

DESCRIPTION/ISSUE

Bill 37-19 would:

- (1) require recipients of Economic Development Fund assistance to agree to certain terms and conditions regarding the use and repayment of the assistance;
- (2) alter eligibility requirements for the Small Business Innovation Research and Small Business Technology Transfer Matching Grants;
- (3) require the repayment to the County of Small Business Innovation Research and Small Business Technology Transfer Matching Grants in certain circumstances; and
- (4) impose remedies related to the provision of false or fraudulent applications and the use of Fund assistance for unauthorized purposes.

SUMMARY OF KEY DISCUSSION POINTS

- N/A

This report contains:

Staff Report

Bill 37-19

Legislative Request Report

Pages 1-2

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MEMORANDUM

November 27, 2019

TO: County Council

FROM: Christine M.H. Wellons, Legislative Attorney
Wellons

SUBJECT: Bill 37-19, Economic Development Fund – Use of Fund and Remedies for Noncompliance¹

PURPOSE: Introduction – no Council votes required

Bill 37-19, Economic Development Fund – Use of Fund and Remedies for Noncompliance, sponsored by Lead Sponsor Councilmember Glass and Co-Sponsor Councilmember Riemer, is scheduled to be introduced on December 3, 2019. A public hearing is tentatively scheduled for January 14, 2020 at 1:30 p.m.

Bill 37-19 would amend the law concerning the administration and use of the Economic Development Fund in order to:

- (1) Increase accountability in the use of grant funds; and
- (2) Expand eligibility for the Small Business Innovation Research and Small Business Technology Transfer Matching Grant Program (SBIR/STTR Program).

BACKGROUND AND SPECIFICS OF THE BILL

Increased Accountability for Grant Recipients

In a Preliminary Inquiry Memorandum dated August 1, 2019, the Office of the Inspector General (OIG) stated with respect to the SBIR/STTR Program:

While grantees sign an award offer letter in order to receive funding, that award offer letter lacks many of the elements of a more formal county contract or agreement, such as the right to audit and a method for dispute resolution. This may create vulnerability for the County should a grantee use the County grant funds for non-project related expenses, or fail to perform under or otherwise abuse their federal grant.

¹ #EconomicDevelopmentAssistance

To remedy the concerns raised in the OIG Memorandum, the bill would require all grants provided through the Economic Development Fund (EDF), including the SBIR/STTR Program, to be memorialized in written agreements. The agreements would be required to include terms:

- (1) Setting forth the grantee's performance criteria;
- (2) Granting the County the right to audit the grantee;
- (3) Requiring periodic reporting from the grantee;
- (4) Prohibiting unauthorized uses of County funds; and
- (5) Providing remedies for the County in the event that a grantee misuses funds, fails to meet performance requirements, or otherwise breaches its agreement with the County.

Under the bill, a grantee who submits a false or fraudulent application for funds, or who uses funds for an unauthorized purpose, would be guilty of a Class A violation and liable for the County's court costs and attorney's fees.

Expanded Eligibility for the SBIR/STTR Program

At the federal level, the SBIR/STTR grant programs provide funding to small businesses engaged in research and development. *See* <https://www.sbir.gov/about>.

Under current County law, which was enacted in 2018, recipients of SBIR or STTR grants from the National Institutes of Health (NIH) are eligible for County matching funds. The bill would expand eligibility for County matching funds to SBIR or STTR grant recipients of any participating federal agency.

Other federal agencies that award SBIR and STTR grants include:

- (1) Department of Defense (SBIR and STTR);
- (2) Department of Energy (SBIR and STTR);
- (3) National Science Foundation (SBIR and STTR);
- (4) Department of Health and Human Services (SBIR and STTR);
- (5) National Aeronautics and Space Administration (SBIR and STTR);
- (6) Department of Agriculture (SBIR);
- (7) Department of Commerce (SBIR);
- (8) Department of Energy (SBIR);
- (9) Department of Homeland Security (SBIR);
- (10) Department of Transportation (SBIR); and
- (11) Environmental Protection Agency (SBIR).

This packet contains:

Bill 37-19

Legislative Request Report

Circle #

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Bill No. 37-19
Concerning: Economic Development
Fund – Use of Fund and Remedies for
Noncompliance
Revised: 11/07/2019 Draft No. 4
Introduced: December 3, 2019
Expires: June 3, 2021
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Evan Glass
Co-Sponsor: Councilmember Riemer

AN ACT to:

- (1) require recipients of Economic Development Fund assistance to agree to certain terms and conditions regarding the use and repayment of the assistance;
- (2) alter eligibility requirements for the Small Business Innovation Research and Small Business Technology Transfer Matching Grants;
- (3) require the repayment to the County of Small Business Innovation Research and Small Business Technology Transfer Matching Grants in certain circumstances;
- (4) impose remedies related to the provision of false or fraudulent applications and the use of Fund assistance for unauthorized purposes; and
- (5) generally amend the law related to the Economic Development Fund.

By amending

Montgomery County Code
Chapter 20, Finance
Sections 20-75 and 20-76E

By adding

Chapter 20, Finance
Section 20-76F

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

28 **20-76E. Small Business Innovation Research and Small Business Technology**
 29 **Transfer Matching Grant Program.**

30 * * *

31 (c) *Eligibility.* A business is eligible to receive the matching grant if the
 32 business:

- 33 (1) has been awarded a SBIR or STTR Phase I or Phase II grant during
- 34 the current calendar year[by the National Institutes of Health]; and
- 35 (2) conducts at least 51% of its research and development operations
- 36 at a physical location in the County.

37 * * *

38 (f) Administration.

- 39 (1) The Director must administer the Program.
- 40 (2) The Director must require a business to enter into an agreement
- 41 under Section 20-75(f), including an agreement to pay back any
- 42 grant payments received if:
 - 43 (A) the business does not remain in the County for [at least 2
 - 44 years after receiving the grant payment.] a minimum time
 - 45 period specified in the agreement; or
 - 46 (B) the business uses the payment for an unauthorized purpose.

47 * * *

48 **20-76F. Remedies for Fraudulent Applications or Misuse of Funds.**

- 49 (a) The remedies under this Section supplement any other remedy available
- 50 under the law, including any remedy under Section 20-75(f)(2).
- 51 (b) A person who submits a false or fraudulent application, or withholds
- 52 material information, to obtain assistance under this Article has
- 53 committed a Class A violation.

54 (c) A person who violates Subsection (b), or who uses assistance from the
55 Fund for an unauthorized purpose under Section 20-75(f), is liable for all
56 court costs and expenses and reasonable attorney's fees incurred by the
57 County to recover any payment, interest, or penalty.

LEGISLATIVE REQUEST REPORT

Bill 37-19

Economic Development Fund – Use of Fund and Remedies for Noncompliance

DESCRIPTION: Bill 37-19 would:

- (1) require recipients of Economic Development Fund assistance to agree to certain terms and conditions regarding the use and repayment of the assistance;
- (2) alter eligibility requirements for the Small Business Innovation Research and Small Business Technology Transfer Matching Grants;
- (3) require the repayment to the County of Small Business Innovation Research and Small Business Technology Transfer Matching Grants in certain circumstances; and
- (4) impose remedies related to the provision of false or fraudulent applications and the use of Fund assistance for unauthorized purposes.

PROBLEM: Need for increased accountability in the use of grant funds.

GOALS AND OBJECTIVES:

- (1) Increase accountability in the use of grant funds; and
- (2) Expand eligibility for the Small Business Innovation Research and Small Business Technology Transfer Matching Grant Program (SBIR/STTR Program).

COORDINATION: Department of Finance

FISCAL IMPACT: OMB

ECONOMIC

IMPACT: Finance

EVALUATION: To be done.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Christine M.H. Wellons, Legislative Attorney

APPLICATION

WITHIN

MUNICIPALITIES: N/A

PENALTIES: Submission of a false or fraudulent grant application would constitute a Class A violation.