



HOUSE BILL 259: 2023 Appropriations Act, Sec. 11.9: NCInnovation

2023-2024 General Assembly

Committee:		Date:	November 30, 2023
Introduced by:		Prepared by:	Amy Darden Staff Attorney
Analysis of:	Sec. 11.9 of S.L. 2023-134		

OVERVIEW: Section 11.9 of S.L. 2023-134 enacts G.S. 143-728, permitting the receipt and retention of funds by NCInnovation, a nonprofit corporation to be used for certain authorized purposes.

This section became effective July 1, 2023.

BILL ANALYSIS: G.S. 143-728, creating Article 76B of Chapter 143, has the following notable elements:

- Findings and purpose statement generally supporting the concept of interstate competition and economic benefits resulting from commercialization of research and development of university efforts and the use of a public private partnership by other States to accomplish the same.
- NCInnovation (NCI) can receive and retain an endowment of State monies if certain requirements are met:
 - Board of Directors (Board) is composed of 13 voting members, four of which are appointed by the General Assembly upon Speaker recommendation, four of which are appointed by the General Assembly upon Preside Pro Tempore recommendation, the remainder of which are appointed per the bylaws. Members should have expertise/experience in research, development, product commercialization, entrepreneurship, and/or capital formation.
 - Compliance with 501(c)(3) lobbying restrictions.
 - No state employees or elected officials on the Board.
 - Board meetings at least quarterly.
 - Employee salary restrictions of \$140,000 (unless increased across the board for similarly situated individuals in a budget).
 - Board members are not paid but can be compensated for services limited to per diem and allowances under G.S. 138-5.
 - Articles of Incorporation amendments that require:
 - Consultation with the Joint Legislative Commission on Governmental Operations prior to adopting or amending bylaws.
 - Annual reporting on programs and activities to Commerce Secretary, Joint Legislative Commission on Governmental Operations, Joint Legislative Economic Development and Global Engagement Oversight Committee, and Fiscal Research Division before September 15th or more, as requested.

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- Reporting must include (i) expenditures for regional hubs and funding awards by recipient, amount, term, and purpose, (ii) outcome data, including jobs created, (iii) cumulative regional hub expenditures and funding awards by program and county, (iv) unaudited report of overhead and administrative costs for the year, (v) current fiscal year budget, planned activities, and goals, (vi) developed performance metrics for NCI recipients, (vii) explanation of salaries, including base and bonus pay, (viii) audited financial statements, and (ix) federal income tax return.
- Ability of State Auditor to audit NCI.
- Restriction on disposing of assets outside the normal course of business without General Assembly approval.
- Provision that the General Assembly can repeal the charter as allowed by the Constitution.
- Provision that NCI can be dissolved pursuant to Chapter 55A or by the General Assembly.
- NCI acts on behalf of, performs duties on behalf of and for the benefit of the State. With funds awards, this additionally requires consulting with the NC Collaboratory regarding: terms and amounts of distributions and using the Collaboratory to manage the distribution. Required duties are not provided in the draft in terms of required programs or other specific information but are broadly described as:
 - Establishing four university innovation hubs of some level of staffing in areas performing below the State average in academic and industrial collaboration. The method of determining this performance is not statutorily governed. NCI will staff the hubs with educational liaisons, business consultants, and technology transfer consultants, tasked with collaborating with industry leaders to facilitate engagement within and among the networks and coordinating research and development and information exchange between networks. Work in this area will also include (i) analyzing research activities, capacities, and capabilities of higher education institutions to identify strengths and gaps that can benefit from collaboration, (ii) assisting in intellectual property protection and commercialization, (iii) creating a State strategic plan to guide future investments and provide resources needed for commercialization of intellectual properties and innovations, (iv) connecting academic work with regional commercial needs and supporting network development between the two, (v) guidance on research efforts to maximize opportunities, and (vi) soliciting applications for funding awards.
 - Providing funding awards to higher education institutions to provide capacity building for federal grant solicitations; support technology development and start-up assistance; obtain intellectual property protections; issue grants to advance research and development to proof of concept; provide advice and guidance to advance proof of concepts as venture capital and capital formation is sought.
 - Protecting State funds by requiring recipients of awards or support by NCI to commercialize and remain in the State for the greater of five years or when the net benefit to the State equals the cost of the award or support provided.

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- The endowment, or funds initially provided, are provided to an independent investment manager for the purpose of generating investment income. Investment income must be used for the activities mentioned in the previous bullet point.
- NCI must raise, in private funds, at least \$25 million within five years of receipt of the endowment and must adopt, publish, and provide to the Joint Legislative Commission on Governmental Operations both a conflicts of interest policy and a gift policy.
- Notwithstanding the general statutory limitations and provisions of Article 76B, as enacted by this section, the provision allows NCI to use \$50 million of the endowment in the 2023-2024 fiscal year and \$90 million of the endowment in the 2024-2025 fiscal year as if it were investment income (to be replenished with future investment income to the extent practicable in the reasonable discretion of NCI's Board) and requires investment income during the 2023-2025 fiscal biennium to be returned to and used in conformity with the endowment.

EFFECTIVE DATE: This section became effective July 1, 2023.