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SENATE BILL NO. 646

Senate Amendments in [] — February 9, 2004

A BILL to amend the Code of Virginia by adding in Article 3 of Chapter 22 of Title 2.2 a section numbered 2.2-2233.2, relating to the Biotechnology Commercialization Loan Fund.

Patron Prior to Engrossment—Senator Howell

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 3 of Chapter 22 of Title 2.2 a section numbered 2.2-2233.2 as follows:

§ 2.2-2233.2. Biotechnology Commercialization Loan Fund; created; purposes; report.

A. From such funds as may be appropriated by the General Assembly and any gifts, grants, or donations from public or private sources, there is created in the state treasury a special nonreverting, permanent fund, to be known as the Biotechnology Commercialization Loan Fund (the Fund), to be administered by the Authority. The Fund shall be established on the books of the Comptroller. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund at the end of each fiscal year, including interest thereon, shall not revert to the general fund but shall remain in the Fund. Expenditures and disbursements from the Fund, which shall consist of loans, shall be made by the State Treasurer on warrants issued by the Comptroller upon written request bearing the signature of the chairman or the vice chairman of the Authority, or, if so authorized by the Authority, bearing his facsimile signature, and the official seal of the Authority.

B. Moneys in the Fund shall be used for the sole purpose of financing technology transfer and commercialization activities related to biotechnology inventions made, solely or in cooperation with other organizations, at qualifying institutions. Such activities shall include, but not be limited to, legal and business consulting services and expenses, including employee compensation, relating to assessing the patentability of inventions, obtaining patent protection for such inventions in the United States and internationally, marketing for such inventions and patents thereon to potential licensees, and negotiating licensing or commercialization agreements with licensees, as well as development of new technology transfer and commercialization programs at qualifying institutions.

The maximum amount of any loans outstanding under the Fund shall be \$3,000,000.

C. Qualifying institutions may apply to the Fund for loans to the extent that such institution's outstanding principal balance at any one time does not exceed \$500,000. Loan applications shall include business plans that detail and explain the anticipated uses of funds received and the proposed repayment schedule.

Loans from the Fund shall take the form of a contractual commitment to the recipient qualifying institution for a line of credit for up to three years, along with an approved schedule of repayment. During the contractual period the recipient qualifying institution may draw upon the line of credit for any expense for which the loan was made, not to exceed the stated amount of the loan award. At the end of the contractual period, the line of credit shall terminate and the outstanding balance of the withdrawals on that line of credit shall become the established basis for that loan.

During the contractual period, deferred interest shall accumulate on the outstanding balance at a rate of three percent compounded annually. Borrowing institutions may prepay part or all of any loan received from the Fund without penalty, and, if repayment is completed within the contractual period of the line of credit, the accumulated interest obligation shall be forgiven.

Repayment of the established basis shall consist of a maximum of 84 equal monthly payments of principal and compounded interest at the determined rate beginning on the first day of the month following the end of the contractual period.

D. Decisions to make loans to applicants from the Fund shall be made by a panel, which shall consist of the President of the Center for Innovative Technology, the Director of the Department of Planning and Budget and the Executive Director of the Virginia Economic Development Partnership, or their designees. The President of the Center for Innovative Technology, or his designee, shall serve as chair. The panel may seek the advice of experts in technology, business, technology transfer or other relevant fields as appropriate in devising guidelines for the implementation of this loan program as well as in making loan decisions.

Specific guidelines for the award of funds from this program shall be established and maintained by the Authority, in consultation with the Virginia Economic Development Partnership and the State Council of Higher Education.

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59 E. A recipient of a loan from the Fund shall report annually to the panel on the uses of loan
60 proceeds during the previous year and on plans for the use of any additional funds it may plan to draw.
61 Such reports shall be filed for so long as the recipient owes money to the Fund.

62 F. The chairman of the Authority shall report annually to the Governor and the General Assembly
63 on activities of the Fund, including a detailed list of awards committed, the amount and description of
64 each approved award, and an assessment of the effectiveness of the Fund in encouraging the
65 commercialization of bioscience and biotechnology inventions made at Virginia institutions of higher
66 education.

67 [G. The records of all transactions involving expenditures of proceeds from loans from the Fund
68 shall be deemed proprietary and confidential business records of the recipient qualifying institution and
69 be exempt from disclosure under the Freedom of Information Act (§ 2.2-3700 et seq.). Applications for,
70 and grants of, loans from the Fund and outstanding balances and payments thereon shall not be deemed
71 proprietary and confidential business records, except that applicants may designate in writing any
72 portion of an application as being proprietary and confidential business information and therefore,
73 exempt from disclosure under the Freedom of Information Act. G. A record transmitted or delivered by
74 a loan applicant or a loan recipient to a public body in the conduct of its duties under this section shall
75 be excluded from disclosure under the Virginia Freedom of Information Act to the extent such record
76 reveals information that (a) is the property of the submitting party, (b) has independent economic value
77 to the owner that causes it to be maintained in secrecy by the owner, and (c) is clearly and specifically
78 identified in writing as proprietary, confidential information at the time of its delivery or transmission to
79 the public body. Nothing in this paragraph shall be construed to prevent the disclosure of information
80 regarding the financial or administrative oversight of the Fund by the Authority.]

81 H. For purposes of this section:

82 "Determined rate" means the rate of interest paid by the Commonwealth on the most recent sale of
83 tax-exempt bonds backed by the full faith and credit of the Commonwealth.

84 "Qualifying institution" means an institution of higher education in the Commonwealth or its
85 associated intellectual property foundation that maintains a recognized program of technology transfer,
86 licensing, or commercialization in conformance with the guidelines established by the State Council of
87 Higher Education for Virginia pursuant to § 23-9.10:4.