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## HOUSE BILL NO. 3171

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations  
on January 31, 2007)

(Patron Prior to Substitute—Delegate Landes)

A BILL to amend and reenact § 2.2-3705.6 of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered 2.2-2240.1, relating to grants paid to the Virginia Economic Development Partnership Authority for use by public benefit research institutes and the creation of a nonprofit, nonstock corporation to administer the payment of such grants.

**Be it enacted by the General Assembly of Virginia:**

**1. That § 2.2-3705.6 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 2.2-2240.1 as follows:**

§ 2.2-2240.1. Grants paid to the Authority to promote research, development, and commercialization of products.

A. The General Assembly may appropriate grants to the Authority for use by a nonprofit, public benefit research institute that (i) conducts research and development for government agencies, commercial businesses, foundations, and other organizations and (ii) commercializes technology.

B. The Authority is hereby authorized to create a nonprofit, nonstock corporation to receive such grants and to oversee the administration of the payment of the grants. As a condition to the payment of any grants to the Authority under this section, the General Assembly may require that such nonprofit, nonstock corporation be created.

C. Notwithstanding the provisions of § 2.2-2240, the Board of Directors of the nonprofit, nonstock corporation shall consist of nine voting members as follows: (i) the president of the University of Virginia, or his designee, (ii) the president of Virginia Polytechnic Institute and State University, or his designee, (iii) the president of James Madison University, or his designee, (iv) the president (or the designee of such president) of Virginia Commonwealth University, Christopher Newport University, the University of Mary Washington, Radford University, Virginia State University, Norfolk State University, Old Dominion University, George Mason University, or Longwood University, as appointed by the Governor, with appointments to this position rotated equally among such universities, (v) one citizen member who shall have substantial experience in research and development in the fields of pharmaceuticals, engineering, energy, or similar sciences, appointed by the Governor, (vi) a representative of a nonprofit, public benefit research institute that has entered into a Memorandum of Agreement with the Commonwealth, (vii) the Secretary of Commerce and Trade, or his designee, (viii) the Secretary of Technology, or his designee, and (ix) a representative of a local government that has concluded a Memorandum of Agreement with such research institute. Citizen members appointed by the Governor shall serve for four-year terms, but no citizen member shall serve for more than two full successive terms. A vacancy for a citizen member shall be filled by the Governor for the unexpired term.

D. The Board is authorized to make grant payments only to those nonprofit, public benefit research institutes described in subsection A that have entered into a Memorandum of Agreement (MOA) with the Commonwealth. The MOA shall, at a minimum, (i) require the research institute to perform research, development, and commercialization activities that improve society and facilitate economic growth; (ii) require research to be conducted collaboratively with Virginia public and private institutions and that such collaborative research benefit the capabilities, facilities, and staff of all organizations involved; (iii) require the research institute to develop protocols for the commercialization efforts of the institute, including protocols addressing intellectual property rights; (iv) require the Board to evaluate fulfillment of key milestones for the research institute, which shall include but not be limited to milestones relating to job creation, research institute reinvestment goals, research proposals submissions, and royalties, and to annually evaluate the Commonwealth's investment in the research institute by reporting on the institute's progress in meeting such milestones; and (v) establish relationships and expectations between the research institutes and Virginia colleges and universities, including opportunities for principal investigators to serve as adjunct faculty and the creation of internships for students and postdoctoral appointees.

E. The maximum amount of grants awarded by the Board shall not exceed a total of \$22 million per recipient through June 30, 2013.

F. The Board of any nonprofit, nonstock corporation created under this section shall be established in the executive branch of state government. The records of the corporation, its Board members, and employees that are deemed confidential or proprietary shall be exempt from disclosure pursuant to subdivision 3 of § 2.2-3705.6 of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

§ 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.

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60 The following records are excluded from the provisions of this chapter but may be disclosed by the  
61 custodian in his discretion, except where such disclosure is prohibited by law:

62 1. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-132.4  
63 or 62.1-134.1.

64 2. Financial statements not publicly available filed with applications for industrial development  
65 financings in accordance with Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2.

66 3. Confidential proprietary records, voluntarily provided by private business pursuant to a promise of  
67 confidentiality from the Department of Business Assistance, the Virginia Economic Development  
68 Partnership, the Virginia Tourism Authority, the Tobacco Indemnification and Community Revitalization  
69 Commission, *a nonprofit, nonstock corporation created pursuant to § 2.2-2240.1*, or local or regional  
70 industrial or economic development authorities or organizations, used by the Department, the  
71 Partnership, the Authority, or such entities for business, trade and tourism development; and memoranda,  
72 working papers or other records related to businesses that are considering locating or expanding in  
73 Virginia, prepared by such entities, where competition or bargaining is involved and where, if such  
74 records are made public, the financial interest of the governmental unit would be adversely affected.

75 4. Information that was filed as confidential under the Toxic Substances Information Act (§ 32.1-239  
76 et seq.), as such Act existed prior to July 1, 1992.

77 5. Fisheries data that would permit identification of any person or vessel, except when required by  
78 court order as specified in § 28.2-204.

79 6. Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections  
80 provided to the Department of Rail and Public Transportation, provided such information is exempt  
81 under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws  
82 administered by the Surface Transportation Board or the Federal Railroad Administration with respect to  
83 data provided in confidence to the Surface Transportation Board and the Federal Railroad  
84 Administration.

85 7. Confidential proprietary records related to inventory and sales, voluntarily provided by private  
86 energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy  
87 contingency planning purposes or for developing consolidated statistical information on energy supplies.

88 8. Confidential proprietary information furnished to the Board of Medical Assistance Services or the  
89 Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ 32.1-331.12 et seq.) of  
90 Chapter 10 of Title 32.1.

91 9. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and  
92 cost projections provided by a private transportation business to the Virginia Department of  
93 Transportation and the Department of Rail and Public Transportation for the purpose of conducting  
94 transportation studies needed to obtain grants or other financial assistance under the Transportation  
95 Equity Act for the 21st Century (P.L. 105-178) for transportation projects, provided such information is  
96 exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other  
97 laws administered by the Surface Transportation Board or the Federal Railroad Administration with  
98 respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad  
99 Administration. However, the exemption provided by this subdivision shall not apply to any wholly  
100 owned subsidiary of a public body.

101 10. Confidential information designated as provided in subsection D of § 2.2-4342 as trade secrets or  
102 proprietary information by any person who has submitted to a public body an application for  
103 prequalification to bid on public construction projects in accordance with subsection B of § 2.2-4317.

104 11. (Effective until July 1, 2007) Memoranda, staff evaluations, or other records prepared by or for  
105 the responsible public entity for the evaluation and negotiation of proposals filed under the  
106 Public-Private Transportation Act of 1995 (§ 56-556 et seq.) or the Public Private Education Facilities  
107 and Infrastructure Act of 2002 (§ 56-575.1 et seq.), where (a) if such records were made public prior to  
108 their disclosure as required by § 56-573.1:1 or 56-575.17, the financial interest or bargaining position of  
109 the public or private entity would be adversely affected, and (b) the basis for the determination required  
110 in clause (a) is documented in writing by the responsible public entity; and records provided by a  
111 private entity to a responsible public entity, affected jurisdiction, or affected local jurisdiction pursuant  
112 to the provisions of the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) or the  
113 Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.), to the extent that  
114 such records contain (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act  
115 (§ 59.1-336 et seq.); (ii) financial records of the private entity, including balance sheets and financial  
116 statements, that are not generally available to the public through regulatory disclosure or otherwise; or  
117 (iii) other information submitted by the private entity, where, if the records were made public prior to  
118 the execution of an interim agreement or a comprehensive agreement, the financial interest or bargaining  
119 position of the public or private entity would be adversely affected.

120 In order for the records specified in clauses (i), (ii) and (iii) to be excluded from the provisions of  
121 this chapter, the private entity shall make a written request to the responsible public entity:

1. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;

2. Identifying with specificity the data or other materials for which protection is sought; and

3. Stating the reasons why protection is necessary.

The responsible public entity shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial records of the private entity. To protect other records submitted by the private entity from disclosure, the responsible public entity shall determine whether public disclosure prior to the execution of an interim agreement or a comprehensive agreement would adversely affect the financial interest or bargaining position of the public or private entity. The responsible public entity shall make a written determination of the nature and scope of the protection to be afforded by the responsible public entity under this subdivision. Once a written determination is made by the responsible public body, the records afforded protection under this subdivision shall continue to be protected from disclosure when in the possession of any affected jurisdiction or affected local jurisdiction to which such records are provided by the responsible public entity.

Nothing in this subdivision shall be construed to authorize the withholding of (a) procurement records as required by § 56-573.1:1 or 56-575.17; (b) information concerning the terms and conditions of any interim or comprehensive agreement, service contract, lease, partnership, or any agreement of any kind entered into by the responsible public entity and the private entity; (c) information concerning the terms and conditions of any financing arrangement that involves the use of any public funds; or (d) information concerning the performance of any private entity developing or operating a qualifying transportation facility or a qualifying project.

For the purposes of this subdivision, the terms "affected jurisdiction," "affected local jurisdiction," "comprehensive agreement," "interim agreement," "qualifying project," "qualifying transportation facility," "responsible public entity," and "private entity" shall mean the same as those terms are defined in the Public-Private Transportation Act of 1995 or in the Public-Private Education Facilities and Infrastructure Act of 2002.

11. (Effective July 1, 2007) Records provided by a private entity to a responsible public entity, affected jurisdiction, or affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.), to the extent that such records contain (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (ii) financial records of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (iii) other information submitted by the private entity, where, if the records were made public prior to the execution of an interim agreement or a comprehensive agreement, the financial interest or bargaining position of the public or private entity would be adversely affected. In order for the records specified in clauses (i), (ii) and (iii) to be excluded from the provisions of this chapter, the private entity shall make a written request to the responsible public entity:

1. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;

2. Identifying with specificity the data or other materials for which protection is sought; and

3. Stating the reasons why protection is necessary.

The responsible public entity shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial records of the private entity. To protect other records submitted by the private entity from disclosure, the responsible public entity shall determine whether public disclosure prior to the execution of an interim agreement or a comprehensive agreement would adversely affect the financial interest or bargaining position of the public or private entity. The responsible public entity shall make a written determination of the nature and scope of the protection to be afforded by the responsible public entity under this subdivision. Once a written determination is made by the responsible public body, the records afforded protection under this subdivision shall continue to be protected from disclosure when in the possession of any affected jurisdiction or affected local jurisdiction to which such records are provided by the responsible public entity.

Nothing in this subdivision shall be construed to authorize the withholding of (a) procurement records as required by § 56-573.1:1 or 56-575.17; (b) information concerning the terms and conditions of any interim or comprehensive agreement, service contract, lease, partnership, or any agreement of any kind entered into by the responsible public entity and the private entity; (c) information concerning the terms and conditions of any financing arrangement that involves the use of any public funds; or (d) information concerning the performance of any private entity developing or operating a qualifying transportation facility or a qualifying project.

For the purposes of this subdivision, the terms "affected jurisdiction," "affected local jurisdiction," "comprehensive agreement," "interim agreement," "qualifying project," "qualifying transportation

183 facility," "responsible public entity," and "private entity" shall mean the same as those terms are defined  
184 in the Public-Private Transportation Act of 1995 or in the Public-Private Education Facilities and  
185 Infrastructure Act of 2002.

186 12. Confidential proprietary information or trade secrets, not publicly available, provided by a private  
187 person or entity to the Virginia Resources Authority or to a fund administered in connection with  
188 financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such  
189 information were made public, the financial interest of the private person or entity would be adversely  
190 affected, and, after June 30, 1997, where such information was provided pursuant to a promise of  
191 confidentiality.

192 13. Confidential proprietary records that are provided by a franchisee under Article 1.2  
193 (§ 15.2-2108.19 et seq.) of Chapter 21 of Title 15.2 to its franchising authority pursuant to a promise of  
194 confidentiality from the franchising authority that relates to the franchisee's potential provision of new  
195 services, adoption of new technologies or implementation of improvements, where such new services,  
196 technologies or improvements have not been implemented by the franchisee on a nonexperimental scale  
197 in the franchise area, and where, if such records were made public, the competitive advantage or  
198 financial interests of the franchisee would be adversely affected. In order for confidential proprietary  
199 information to be excluded from the provisions of this chapter, the franchisee shall (i) invoke such  
200 exclusion upon submission of the data or other materials for which protection from disclosure is sought,  
201 (ii) identify the data or other materials for which protection is sought, and (iii) state the reason why  
202 protection is necessary.

203 14. Documents and other information of a proprietary nature furnished by a supplier of charitable  
204 gaming supplies to the Department of Charitable Gaming pursuant to subsection E of § 18.2-340.34.

205 15. Records and reports related to Virginia apple producer sales provided to the Virginia State Apple  
206 Board pursuant to §§ 3.1-622 and 3.1-624.

207 16. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) of Title 59.1,  
208 submitted by CMRS providers as defined in § 56-484.12 to the Wireless Carrier E-911 Cost Recovery  
209 Subcommittee created pursuant to § 56-484.15, relating to the provision of wireless E-911 service.

210 17. Records submitted as a grant application, or accompanying a grant application, to the  
211 Commonwealth Health Research Board pursuant to Chapter 22 (§ 23-277 et seq.) of Title 23 to the  
212 extent such records contain proprietary business or research-related information produced or collected by  
213 the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific,  
214 technical, or scholarly issues, when such information has not been publicly released, published,  
215 copyrighted, or patented, if the disclosure of such information would be harmful to the competitive  
216 position of the applicant.

217 18. Confidential proprietary records and trade secrets developed and held by a local public body (i)  
218 providing telecommunication services pursuant to § 56-265.4:4 and (ii) providing cable television  
219 services pursuant to Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 21 of Title 15.2, to the extent that  
220 disclosure of such records would be harmful to the competitive position of the locality. In order for  
221 confidential proprietary information or trade secrets to be excluded from the provisions of this chapter,  
222 the locality in writing shall (i) invoke the protections of this subdivision, (ii) identify with specificity the  
223 records or portions thereof for which protection is sought, and (iii) state the reasons why protection is  
224 necessary.

225 19. Confidential proprietary records and trade secrets developed by or for a local authority created in  
226 accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) to provide  
227 qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of  
228 Title 56, where disclosure of such information would be harmful to the competitive position of the  
229 authority, except that records required to be maintained in accordance with § 15.2-2160 shall be  
230 released.

231 20. Trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or financial  
232 records of a business, including balance sheets and financial statements, that are not generally available  
233 to the public through regulatory disclosure or otherwise, provided to the Department of Minority  
234 Business Enterprise as part of an application for (i) certification as a small, women- or minority-owned  
235 business in accordance with Chapter 14 (§ 2.2-1400 et seq.) of this title or (ii) a claim made by a  
236 disadvantaged business or an economically disadvantaged individual against the Capital Access Fund for  
237 Disadvantaged Businesses created pursuant to § 2.2-2311. In order for such trade secrets or financial  
238 records to be excluded from the provisions of this chapter, the business shall (a) invoke such exclusion  
239 upon submission of the data or other materials for which protection from disclosure is sought, (b)  
240 identify the data or other materials for which protection is sought, and (c) state the reasons why  
241 protection is necessary.