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HOUSE BILL NO. 416

Offered January 9, 2008

Prefiled January 4, 2008

A BILL to amend and reenact §§ 2.2-225, 2.2-2203, 2.2-2514, 2.2-2515, 2.2-2516, 2.2-2517, 23-4.4, 23-231.9, and 23-231.10 of the Code of Virginia, to amend the Code of Virginia by adding in Article 4 of Chapter 22 of Title 2.2 sections numbered 2.2-2246.1, 2.2-2246.2, and 2.2-2246.3, and to repeal Article 3 (§§ 2.2-2218 through 2.2-2233.2) of Chapter 22 of Title 2.2 of the Code of Virginia, relating to the Innovative Technology Authority.

Patron—Marshall, R.G.

Referred to Committee on Science and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-225, 2.2-2203, 2.2-2514, 2.2-2515, 2.2-2516, 2.2-2517, 23-4.4, 23-231.9, and 23-231.10 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Article 4 of Chapter 22 of Title 2.2 sections numbered 2.2-2246.1, 2.2-2246.2, and 2.2-2246.3 as follows:

§ 2.2-225. Position established; agencies for which responsible; additional powers.

The position of Secretary of Technology (the Secretary) is created. The Secretary shall be responsible to the Governor for the following agencies and boards: Information Technology Investment Board, Innovative Technology Authority, Virginia Information Technologies Agency, Virginia Geographic Information Network Advisory Board, the Wireless E-911 Services Board, and the Virginia Research and Technology Advisory Commission. The Governor, by executive order, may assign any other state executive agency to the Secretary, or reassign any agency listed in this section to another Secretary.

Unless the Governor expressly reserves such power to himself, the Secretary may, with regard to strategy development, planning and budgeting for technology programs in the Commonwealth:

1. Monitor trends and advances in fundamental technologies of interest and importance to the economy of the Commonwealth and direct and approve a stakeholder-driven technology strategy development process that results in a comprehensive and coordinated view of research and development goals for industry, academia and government in the Commonwealth. This strategy shall be updated biennially and submitted to the Governor, the Speaker of the House of Delegates and the President Pro Tempore of the Senate.

2. Work closely with the appropriate federal research and development agencies and program managers to maximize the participation of Commonwealth industries and universities in these programs consistent with agreed strategy goals.

3. Direct the development of plans and programs for strengthening the technology resources of the Commonwealth's high technology industry sectors and for assisting in the strengthening and development of the Commonwealth's Regional Technology Councils.

4. Direct the development of plans and programs for improving access to capital for technology-based entrepreneurs.

5. Assist the Joint Commission on Technology and Science created pursuant to § 30-85 in its efforts to stimulate, encourage, and promote the development of technology in the Commonwealth.

6. Continuously monitor and analyze the technology investments and strategic initiatives of other states to ensure the Commonwealth remains competitive.

7. Strengthen interstate and international partnerships and relationships in the public and private sectors to bolster the Commonwealth's reputation as a global technology center.

8. Develop and implement strategies to accelerate and expand the commercialization of intellectual property created within the Commonwealth.

9. Ensure the Commonwealth remains competitive in cultivating and expanding growth industries, including life sciences, advanced materials and nanotechnology, biotechnology, and aerospace.

10. Monitor the trends in the availability and deployment of and access to broadband communications services, which include, but are not limited to, competitively priced, high-speed data services and Internet access services of general application, throughout the Commonwealth and advancements in communications technology for deployment potential. The Secretary shall report annually by December 1 to the Governor and General Assembly on those trends.

§ 2.2-2203. Board of directors; members and officers; Executive Director.

The Authority shall be governed by a board of directors consisting of ~~twelve~~ *eleven* members, ~~four~~ *three* of whom shall be the President of the Center for Innovative Technology, the President of Old

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59 Dominion University, the Secretary of Commerce and Trade, and the Secretary of Technology, who
60 shall serve as members of the Board for terms coincident with their terms of office. The remaining eight
61 members shall be appointed by the Governor as follows: three members representing the commercial
62 space flight industry; two members representing the telecommunications industry; one member
63 representing the County of Accomack, one member representing the County of Northampton, and one
64 at-large member. Of the members appointed by the Governor, two shall be appointed for terms of one
65 year, three for terms of two years, and three for terms of three years, from the effective date of their
66 appointment. Thereafter, the members of the Board shall be appointed for terms of three years. All
67 members of the Board appointed by the Governor shall be confirmed by each house of the General
68 Assembly. Vacancies in the membership of the Board shall be filled by appointment for the unexpired
69 portion of the term. Members of the Board shall be subject to removal from office in like manner as are
70 state, county, town and district officers under the provisions of §§ 24.2-230 through 24.2-238.
71 Immediately after appointment, the members of the Board shall enter upon the performance of their
72 duties.

73 The Board shall annually elect one of its members as chairman and another as vice-chairman, a
74 secretary, and a treasurer who need not be a member of the Board. The Board may also elect other
75 subordinate officers, who need not be members of the Board, as it deems proper. The chairman or, in
76 his absence, the vice-chairman shall preside at all meetings of the Board. In the absence of both the
77 chairman and vice-chairman, the Board shall appoint a chairman pro tempore, who shall preside at such
78 meetings. Seven members shall constitute a quorum for the transaction of the Authority's business, and
79 no vacancy in the membership shall impair the right of a quorum to exercise all the rights and perform
80 all the duties of the Authority.

81 The members of the Board shall be entitled to reimbursement for their reasonable travel, meal and
82 lodging expenses incurred in attending the meetings of the Board or while otherwise engaged in the
83 discharge of their duties. Such expenses shall be paid out of the treasury of the Authority upon vouchers
84 signed by the chairman of the Board or by such other person designated by the Board for this purpose.

85 The Board may employ an Executive Director of the Authority, who shall serve at the pleasure of
86 the Board, to direct the day-to-day operations and activities of the Authority and carry out the powers
87 and duties conferred upon him by the Board. The Executive Director and employees of the Authority
88 shall be compensated in the manner provided by the Board and shall not be subject to the provisions of
89 the Virginia Personnel Act (§ 2.2-2900 et seq.) of this title.

90 § 2.2-2246.1. *Advanced Communications Assistance Fund created; purposes.*

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

101 B. Moneys in the Fund shall be used solely for the purpose of helping underserved localities in the
102 Commonwealth take full advantage of advanced communications services. Loans or grants from the
103 Fund shall be used in underserved localities for (i) the internal communication needs of such localities,
104 which may include but are not limited to fiber-optic, satellite, and wireless communications networks, or
105 (ii) help in financing the costs of planning, designing, purchasing, leasing, installing, or maintaining
106 dark fiber to the extent permitted in § 15.2-1500.

107 C. For purposes of this section:

108 "Dark fiber" means fiber optic cable that is not lighted by lasers or other electronic equipment.

109 "Underserved locality" means a locality wherein advanced communication services are not readily
110 and generally available from three or more nonaffiliated certificated local exchange companies.

111 § 2.2-2246.2. *Commonwealth Technology Research Fund; continued; purposes; report.*

112 A. From such funds as may be appropriated by the General Assembly and any gifts, grants, or
113 donations from public or private sources, there is created in the state treasury a special nonreverting,
114 permanent fund, to be known as the Commonwealth Technology Research Fund (the Fund), to be
115 administered by the Authority. The Fund shall be established on the books of the Comptroller. Interest
116 earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in
117 the Fund at the end of each fiscal year, including interest thereon, shall not revert to the general fund
118 but shall remain in the Fund. Expenditures and disbursements from the Fund, which may consist of
119 grants or loans, shall be made by the State Treasurer on warrants issued by the Comptroller upon
120 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 attracting public and private research funding for institutions of higher education, in order to increase technological and economic development in Virginia. Awards from the Fund shall be made to Virginia public institutions of higher education or to their associated intellectual property foundations.

C. For purposes of awards, the Fund shall have four components: (i) a matching funds program to leverage federal and private research dollars; (ii) a strategic enhancement program to upgrade the research capacity of those academic departments that have demonstrated the ability to perform innovative research in technology fields that has strong potential to contribute to economic development in the Commonwealth; (iii) a program to upgrade research capacity in key departments of the institutions in order to attract specific companies to locate or expand in Virginia; and (iv) a program to enhance the capability of the institutions of higher education to commercialize technologies developed through their research.

Awards for the matching funds component shall be contingent upon the approval of the institution's grant proposal for federal or private funds.

Awards from the Fund shall be matched on at least a dollar-for-dollar basis by the respective institution of higher education, with private funds, or combinations thereof. However, for good cause, this requirement may be waived, in whole or in part, by the chairman of the Authority, provided that such action is reported to the Chairmen of the House Appropriations and Senate Finance Committees at least 10 days prior to the award or disbursement of such funds for such purpose.

D. Awards shall be based on scientific merit and economic development potential of research programs in the following fields: aerospace, biotechnology, energy, environmental and information technologies, high performance manufacturing, telecommunications, and transportation. However, for good cause, awards supporting research in other relevant fields or disciplines may be made by the chairman of the Authority, provided that such action is reported to the Chairmen of the House Appropriations and Senate Finance Committees at least 10 days prior to the award or disbursement of such funds for such purpose.

Specific guidelines for the award of funds from this program shall be established and maintained by the Authority, in consultation with the State Council of Higher Education. These guidelines shall address, at a minimum, the application process and the composition and operation of proposal review panels and give special emphasis to fostering collaboration between institutions of higher education and partnerships between institutions of higher education and business and industry.

The chairman of the Authority shall coordinate the evaluation of proposals, to be conducted by review panels with the appropriate science and technology expertise, drawn from federal agencies and academic and industrial research institutions across the country.

Recommendations on the grants shall be made by representatives from the Virginia Research and Technology Advisory Commission pursuant to § 2.2-2515 and the State Council of Higher Education based on the recommendations of the review panels.

E. The chairman of the Authority shall provide the Governor and the General Assembly with an annual report to include a detailed list of awards committed, the amount of each approved award, a description of the approved proposals, the amount of federal or private matching funds anticipated where applicable, and an assessment of the effectiveness of the Fund in attracting public and private research funding and increasing technological and economic development in Virginia.

§ 2.2-2246.3. 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

182 *transfer and commercialization programs at qualifying institutions.*

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

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

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

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

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

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

207 *Specific guidelines for the award of funds from this program shall be established and maintained by*
208 *the Authority, in consultation with the State Council of Higher Education.*

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

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

217 *G. A record transmitted or delivered by a loan applicant or a loan recipient to a public body in the*
218 *conduct of its duties under this section shall be excluded from disclosure under the Virginia Freedom of*
219 *Information Act to the extent such record reveals information that (a) is the property of the submitting*
220 *party, (b) has independent economic value to the owner that causes it to be maintained in secrecy by*
221 *the owner, and (c) is clearly and specifically identified in writing as proprietary, confidential*
222 *information at the time of its delivery or transmission to the public body. Nothing in this paragraph*
223 *shall be construed to prevent the disclosure of information regarding the financial or administrative*
224 *oversight of the Fund by the Authority.*

225 *H. For purposes of this section:*

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

228 *"Qualifying institution" means an institution of higher education in the Commonwealth or its*
229 *associated intellectual property foundation that adopts a policy regarding the ownership, protection,*
230 *assignment, and use of intellectual property pursuant to § 23-4.3.*

231 *I. No loan shall be made to any entity that conducts human stem cell research from human embryos,*
232 *or for any loan to conduct such research; however, research conducted using adult stem cells may be*
233 *funded.*

234 *§ 2.2-2514. Membership; terms; vacancies; chairmen.*

235 *A. Persons appointed to the Board shall be selected for their knowledge of, background in, or*
236 *experience with basic and applied research, emerging technologies, commercialization of the results and*
237 *outputs of research activities, and the development and financing of technology intensive enterprises.*

238 *B. The Commission shall consist of ~~34~~ 30 members as follows: two members of the House*
239 *Committee on Science and Technology appointed by the Speaker of the House of Delegates; the*
240 *chairman of the Senate Committee on General Laws or his designee; and 13 citizen members*
241 *representing research- and technology-intensive industries, four of whom shall be appointed by the*
242 *Speaker of the House of Delegates, two of whom shall be appointed by the Senate Committee on Rules,*
243 *and seven of whom shall be appointed by the Governor; and the Secretaries of Commerce and Trade,*

Education, and Technology, or their designees.; and the President of the Center for Innovative Technology or his designee. The following members shall serve as ex officio members with voting privileges: the Vice-Provosts of Research, or their designees, at The College of William and Mary, Eastern Virginia Medical School, George Mason University, James Madison University, Old Dominion University, University of Virginia, Virginia Commonwealth University, and Virginia Polytechnic Institute and State University; the Director of the Thomas Jefferson National Accelerator Facility (Jefferson Lab) or his designee, and the senior technology executive of the Naval Surface Warfare Center, Dahlgren Division or his designee. The Director of the NASA Langley Research Center or his designee shall also serve as an ex officio member, but without voting privileges. Legislative members shall be appointed to serve terms coincident with their terms of office. The citizen members shall be appointed for terms of four years, except that appointments to fill vacancies shall be for the unexpired term. Vacancies shall be filled in the manner of the original appointments.

C. The Governor shall designate one member representing Virginia's research universities and one member representing the private sector as cochairs.

D. A majority of the members of the Commission shall constitute a quorum. Commission meetings shall be upon the call of the cochairs.

E. Members of the Commission shall receive compensation and be entitled to be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2104, 2.2-2813, 2.2-2823, 2.2-2825 and 30-19.12.

§ 2.2-2515. Powers and duties of the Commission.

The Commission shall:

1. Undertake studies and gather information and data in order to accomplish its purposes as set forth in § 2.2-2513, and to formulate and present its recommendations to the Governor and the General Assembly;

2. Make recommendations upon all proposals submitted to the Grant Allocation Committee, as described in paragraph 4 of subsection D of § ~~2.2-2233.4~~ § 2.2-2246.2, for grant allocations to be disbursed from the Commonwealth Technology Research Fund created by § ~~2.2-2233.4~~ § 2.2-2246.2;

3. Apply for, accept, and expend gifts, grants, or donations from public, quasi-public or private sources and state funds that may be appropriated by the General Assembly to carry out its purpose; and

4. Report annually its findings and recommendations to the Governor. The Commission may make interim reports to the Governor as it deems advisable.

§ 2.2-2516. Funding for Commission's activities.

Funding necessary to support the Commission's work, including but not limited to the compensation and reimbursement pursuant to subsection E of § 2.2-2514, shall be provided by the ~~Innovative Technology~~ Virginia Economic Development Partnership Authority and other sources pursuant to subdivision 2 of § 2.2-2515.

§ 2.2-2517. Staff; cooperation from other state agencies.

The ~~Innovative Technology~~ Virginia Economic Development Partnership Authority shall provide staff support to the Commission. All agencies of the Commonwealth shall assist the Commission upon request.

§ 23-4.4. Authorization to transfer interest; Governor's approval required under certain circumstances.

A. The boards of visitors, the State Board for Community Colleges, or their designees are authorized to assign any interest they possess in intellectual property or in materials in which the institution claims an interest, provided such assignment is in accordance with the terms of the institution's intellectual property policies adopted pursuant to subsection A of § 23-4.3. However, the Governor's prior written approval shall be required for transfers of such property developed wholly or predominately through the use of state general funds, exclusive of capital assets, and either (i) such property was developed by an employee of the institution acting within the scope of his assigned duties, or (ii) such property is to be transferred to an entity other than the ~~Innovative Technology Authority~~, an entity whose purpose is to manage intellectual properties on behalf of nonprofit organizations, colleges and universities, or an entity whose purpose is to benefit the respective institutions. The Governor may attach conditions to these transfers as he deems necessary. In the event the Governor does not approve such transfer, the materials shall remain the property of the respective institutions and may be used and developed in any manner permitted by law.

B. The president of each state-supported institution of higher education, including the chancellor of the Virginia Community College System, shall report annually to the Governor and the Joint Commission on Technology and Science regarding the assignment of any intellectual property interests by that institution.

§ 23-231.9. Membership of governing board; terms; compensation; officers; bylaws.

A. The Extension Partnership shall be governed by a 2423- member board of trustees consisting of three presidents of community colleges; two presidents of public four-year institutions of higher

305 education, and one president of a private four-year institution of higher education; 15 citizen members,
306 representing manufacturing industries, to be appointed by the Governor; ~~the director of the Center for~~
307 ~~Innovative Technology~~; the Secretary of Commerce and Trade; and the Secretary of Technology.

308 B. Initial appointments in 1992 shall be as follows: the three community college presidents shall be
309 appointed for two-year, three-year, and four-year terms, respectively; the two presidents of the public
310 four-year institutions shall be appointed for two-year and four-year terms, respectively; the president of a
311 private four-year institution shall be appointed for a three-year term; two citizen members shall be
312 appointed for two-year terms, and two citizen members shall be appointed for three-year and four-year
313 terms, respectively. Of the five citizen members to be appointed in 1994, two shall be appointed for
314 two-year terms, two shall be appointed for three-year terms, and one shall be appointed for a four-year
315 term. Of the six citizen members to be appointed in 1997, two shall be appointed for two-year terms,
316 two shall be appointed for three-year terms, and two shall be appointed for four-year terms. Thereafter,
317 all appointments shall be for terms of four years, except that appointments to fill vacancies shall be for
318 the unexpired terms. With the exceptions of ~~the director of the Center for Innovative Technology~~, the
319 Secretary of Commerce and Trade, and the Secretary of Technology, no person shall be eligible to serve
320 for more than two successive four-year terms; however, upon the expiration of a term of less than four
321 years, or after the expiration of the remainder of a term to which appointed to fill a vacancy, two
322 additional terms may be served by such member if appointed thereto.

323 C. The board shall elect a chairman and a vice-chairman from among its members and shall also
324 elect a secretary and a treasurer, who may or may not be members of the board. The board may also
325 elect other subordinate officers, who may or may not be members of the board. All members shall be
326 reimbursed for their actual expenses incurred in the performance of their duties in the work of the
327 Extension Partnership.

328 D. The board may adopt, alter, or repeal its own bylaws that govern the manner in which its
329 business may be transacted and may form committees and advisory councils, which may include
330 representatives who are not board members.

331 § 23-231.10. Executive director; powers and duties; staff.

332 A. The board shall appoint an executive director who shall (i) supervise and manage the Extension
333 Partnership, (ii) discharge such functions as may be directed by the board, and (iii) prepare and submit,
334 upon direction and approval by the board, all requests for appropriations. The executive director shall be
335 authorized to employ such staff as necessary to enable the Extension Partnership to perform its duties as
336 set forth in this chapter. The board is authorized to determine staff duties and to fix salaries and
337 compensation from such funds as may be appropriated or received. In addition, the board is authorized
338 to make arrangements with institutions of higher education to extend course credit to graduate students
339 employed by the Extension Partnership.

340 B. Additional staff support for the functions of the Extension Partnership may be provided by ~~the~~
341 ~~Center for Innovative Technology~~, the University of Virginia Center for Public Service, community
342 colleges and four-year institutions of higher education, small business development centers, and private
343 businesses.

344 2. That Article 3 (§§ 2.2-2218 through 2.2-2233.2) of Chapter 22 of Title 2.2 of the Code of
345 Virginia is repealed.