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## HOUSE BILL NO. 1941

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Science and Technology)

(Patron Prior to Substitute—Delegate Peace)

House Amendments in [ ] — February 5, 2009

A BILL to amend and reenact § 2.2-2822 of the Code of Virginia, relating to patent and copyright policies of the Commonwealth.

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-2822 of the Code of Virginia is amended and reenacted as follows:

§ 2.2-2822. Ownership and use of patents and copyrights developed by certain public employees; Creative Commons copyrights.

A. Patents, copyrights or materials that were potentially patentable or copyrightable developed by a state employee during working hours or within the scope of his employment or when using state-owned or state-controlled facilities shall be the property of the Commonwealth. ~~The Governor shall set such policies as he deems necessary to implement this section.~~

B. The Secretary of [ ~~Technology Administration~~, in consultation with the Secretary of Technology, ] shall establish policies, subject to the approval of the Governor, regarding the protection and release of patents and copyrights owned by the Commonwealth. Such policies shall include, at a minimum, the following:

1. A policy granting state agencies the authority over the protection and release of patents and copyrights created by employees of the agency. Such policy shall require state agencies to release all potentially copyrightable materials under the Creative Commons or Open Source Initiative licensing system, as appropriate.

2. A provision authorizing state agencies to seek patent protection only in those instances where the agency reasonably determines the patent has significant commercial value. The responsible state agency shall file with the Secretary a summary of the expected commercial value of the patent.

3. A procedure authorizing state agencies to license or transfer to a state employee any interest in potentially patentable material developed by that employee during work hours.

4. A procedure authorizing state agencies to license or transfer to a private entity any interest in potentially patentable material developed by that agency.

C. Nothing in this section shall be construed to limit access to public records as provided in the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

D. This section shall not apply to employees of public institutions of higher education who shall be subject to the patent and copyright policies of the institution employing them.

2. That the Secretary of [ ~~Technology Administration~~, in consultation with the Secretary of Technology, ] shall submit a final copy of the patent and copyright policy required pursuant to this section to the House Committee on Science and Technology, Senate Committee on General Laws and Technology, and the Joint Commission on Technology and Science no later than December 1, 2009.

ENGROSSED

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