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**HOUSE BILL NO. 678**

Offered January 13, 2010

Prefiled January 12, 2010

*A BILL to amend and reenact §§ 2.2-2218, 2.2-2221, and 2.2-3711 of the Code of Virginia, relating to the Innovation and Entrepreneurship Investment Authority and the Commonwealth Research and Commercialization Fund.*

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Patrons—May and Nutter

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Referred to Committee on Science and Technology

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

**1. That §§ 2.2-2218, 2.2-2221, and 2.2-3711 of the Code of Virginia are amended and reenacted as follows:**

§ 2.2-2218. Short title; definitions.

A. This article may be cited as the "~~Innovative Technology Authority Act of 1984~~ *Innovation and Entrepreneurship Investment Authority Act of 2009*, as amended."

B. As used in this article, unless the context requires a different meaning:

"Project" shall mean the construction, improvement, furnishing, maintenance, acquisition or operation of any facility or the provision for or funding of any activity that will further the purposes described in § 2.2-2219.

§ 2.2-2221. Powers of the Authority.

The Authority is granted all powers necessary or convenient for the carrying out of its statutory purposes, including, but not limited to, the following rights and powers to:

1. Sue and be sued, implead and be impleaded, complain and defend in all courts.

2. Adopt, use, and alter at will a corporate seal.

3. Acquire, purchase, hold, use, lease or otherwise dispose of any project and property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of the Authority, and, without limitation of the foregoing, to lease as lessee, any project and any property, real, personal or mixed, or any interest therein, at such annual rental and on such terms and conditions as may be determined by the Board and to lease as lessor to any person, any project and any property, real, personal or mixed, tangible or intangible, or any interest therein, at any time acquired by the Authority, whether wholly or partially completed, at such annual rental and on such terms and conditions as may be determined by the Board, and to sell, transfer or convey any property, real, personal or mixed, tangible or intangible or any interest therein, at any time acquired or held by the Authority on such terms and conditions as may be determined by the board of the Authority.

4. Plan, develop, undertake, carry out, construct, improve, rehabilitate, repair, furnish, maintain, and operate projects.

5. Adopt bylaws for the management and regulation of its affairs.

6. Establish and maintain satellite offices within the Commonwealth.

7. Fix, alter, charge, and collect rates, rentals, and other charges for the use of projects of, or for the sale of products of or for the services rendered by, the Authority, at rates to be determined by it for the purpose of providing for the payment of the expenses of the Authority, the planning, development, construction, improvement, rehabilitation, repair, furnishing, maintenance, and operation of its projects and properties, the payment of the costs accomplishing its purposes set forth in § 2.2-2219, the payment of the principal of and interest on its obligations, and to fulfill the terms and provisions of any agreements made with the purchasers or holders of any such obligations.

8. Borrow money, make and issue bonds including bonds as the Authority may determine to issue for the purpose of accomplishing the purposes set forth in § 2.2-2219 or of refunding bonds previously issued by the Authority, and to secure the payment of all bonds, or any part thereof, by pledge or deed of trust of all or any of its revenues, rentals, and receipts or of any project or property, real, personal or mixed, tangible or intangible, or any interest therein, and to make agreements with the purchasers or holders of such bonds or with others in connection with any such bonds, whether issued or to be issued, as the Authority deems advisable, and in general to provide for the security for the bonds and the rights of holders thereof.

9. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties, the furtherance of its purposes and the execution of its powers under this article, including agreements with any person or federal agency.

10. Employ, in its discretion, consultants, attorneys, architects, engineers, accountants, financial

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59 experts, investment bankers, superintendents, managers and such other employees and agents as may be  
60 necessary, and to fix their compensation to be payable from funds made available to the Authority.

61 11. Receive and accept from any federal or private agency, foundation, corporation, association or  
62 person grants to be expended in accomplishing the objectives of the Authority, and to receive and accept  
63 from the Commonwealth or any state, and any municipality, county or other political subdivision thereof  
64 and from any other source, aid or contributions of either money, property, or other things of value, to be  
65 held, used and applied only for the purposes for which such grants and contributions may be made.

66 12. Render advice and assistance, and to provide services, to institutions of higher education and to  
67 other persons providing services or facilities for scientific and technological research or graduate  
68 education, provided that credit towards a degree, certificate or diploma shall be granted only if such  
69 education is provided in conjunction with an institution of higher education authorized to operate in  
70 Virginia.

71 13. Develop, undertake and provide programs, alone or in conjunction with any person or federal  
72 agency, for scientific and technological research, technology management, continuing education and  
73 in-service training, provided that credit towards a degree, certificate or diploma shall be granted only if  
74 such education is provided in conjunction with an institution of higher education authorized to operate in  
75 Virginia; to foster the utilization of scientific and technological research information, discoveries and  
76 data and to obtain patents, copyrights and trademarks thereon; to coordinate the scientific and  
77 technological research efforts of public institutions and private industry and to collect and maintain data  
78 on the development and utilization of scientific and technological research capabilities. The universities  
79 set forth in § 2.2-2220 shall be the principal leading universities in the research institutes.

80 14. Pledge or otherwise encumber all or any of the revenues or receipts of the Authority as security  
81 for all or any of the obligations of the Authority.

82 15. Receive, administer, and market any interest in patents, copyrights and materials that were  
83 potentially patentable or copyrightable developed by or for state agencies, public institutions of higher  
84 education and political subdivisions of the Commonwealth. The Authority shall return to the agency,  
85 institution or political subdivision any revenue in excess of its administrative and marketing costs. When  
86 general funds are used to develop the patent or copyright or material that was potentially patentable or  
87 copyrightable, any state agency, except a public institution of higher education in Virginia, shall return  
88 any revenues it receives from the Authority to the general fund unless the Governor authorizes a  
89 percentage of the net royalties to be shared with the developer of the patented, copyrighted, or  
90 potentially patentable or copyrightable property.

91 16. Develop a comprehensive research and development strategic roadmap for the Commonwealth to  
92 identify research areas worthy of institutional focus. Such a roadmap shall incorporate the strategic plan  
93 for each research university in the Commonwealth, identify common themes, and make  
94 recommendations for alignment of research and development and economic growth in the  
95 Commonwealth. In developing the strategic roadmap, the Authority shall solicit feedback from both  
96 public and private institutions of higher education in the Commonwealth, as well as the private sector.  
97 The Authority shall review and update the roadmap at least once every three years. The Authority shall  
98 submit the roadmap, and any subsequent updates, to the Governor and the chairmen of the Senate  
99 Finance Committee, the House Appropriations Committee, the Senate Committee on General Laws and  
100 Technology, the House Committee on Science and Technology, and the Joint Commission on  
101 Technology and Science.

102 17. Foster innovative partnerships and relationships among the Commonwealth, the Commonwealth's  
103 state institutions of higher education, the private sector, federal labs, and not-for-profit organizations to  
104 improve research and development commercialization efforts.

105 18. Receive and review annual reports from state institutions of higher education regarding the  
106 progress of projects funded through the Commonwealth Research Initiative or the Commonwealth  
107 ~~Technology Research and Commercialization~~ Fund. The Authority shall develop guidelines,  
108 methodologies, and criteria for the reports. The Authority shall aggregate the reports and submit an  
109 annual omnibus report on the status of research and development initiatives in the Commonwealth to the  
110 Governor and the chairmen of the Senate Finance Committee, the House Appropriations Committee, the  
111 Senate Committee on General Laws and Technology, the House Committee on Science and Technology,  
112 and the Joint Commission on Technology and Science.

113 19. Develop guidelines for the award of funds from the Commonwealth ~~Technology Research and~~  
114 ~~Commercialization~~ Fund pursuant to § 2.2-2233.1.

115 20. Do all acts and things necessary or convenient to carry out the powers granted to it by law.  
116 § 2.2-3711. Closed meetings authorized for certain limited purposes.

117 A. Public bodies may hold closed meetings only for the following purposes:

118 1. Discussion, consideration, or interviews of prospective candidates for employment; assignment,  
119 appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public  
120 officers, appointees, or employees of any public body; and evaluation of performance of departments or

schools of public institutions of higher education where such evaluation will necessarily involve discussion of the performance of specific individuals. Any teacher shall be permitted to be present during a closed meeting in which there is a discussion or consideration of a disciplinary matter that involves the teacher and some student and the student involved in the matter is present, provided the teacher makes a written request to be present to the presiding officer of the appropriate board.

2. Discussion or consideration of admission or disciplinary matters or any other matters that would involve the disclosure of information contained in a scholastic record concerning any student of any Virginia public institution of higher education or any state school system. However, any such student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall be permitted to be present during the taking of testimony or presentation of evidence at a closed meeting, if such student, parents, or guardians so request in writing and such request is submitted to the presiding officer of the appropriate board.

3. Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body.

4. The protection of the privacy of individuals in personal matters not related to public business.

5. Discussion concerning a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the business' or industry's interest in locating or expanding its facilities in the community.

6. Discussion or consideration of the investment of public funds where competition or bargaining is involved, where, if made public initially, the financial interest of the governmental unit would be adversely affected.

7. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body; and consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel. For the purposes of this subdivision, "probable litigation" means litigation that has been specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit the closure of a meeting merely because an attorney representing the public body is in attendance or is consulted on a matter.

8. In the case of boards of visitors of public institutions of higher education, discussion or consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts for services or work to be performed by such institution. However, the terms and conditions of any such gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign person and accepted by a public institution of higher education in Virginia shall be subject to public disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision, (i) "foreign government" means any government other than the United States government or the government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity created under the laws of the United States or of any state thereof if a majority of the ownership of the stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the membership of any such entity is composed of foreign persons or foreign legal entities, or any legal entity created under the laws of a foreign government; and (iii) "foreign person" means any individual who is not a citizen or national of the United States or a trust territory or protectorate thereof.

9. In the case of the boards of trustees of the Virginia Museum of Fine Arts, the Virginia Museum of Natural History, and The Science Museum of Virginia, discussion or consideration of matters relating to specific gifts, bequests, and grants.

10. Discussion or consideration of honorary degrees or special awards.

11. Discussion or consideration of tests, examinations, or other records excluded from this chapter pursuant to subdivision 4 of § 2.2-3705.1.

12. Discussion, consideration, or review by the appropriate House or Senate committees of possible disciplinary action against a member arising out of the possible inadequacy of the disclosure statement filed by the member, provided the member may request in writing that the committee meeting not be conducted in a closed meeting.

13. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement or to consider the terms, conditions, and provisions of a hazardous waste siting agreement if the governing body in open meeting finds that an open meeting will have an adverse effect upon the negotiating position of the governing body or the establishment of the terms, conditions and provisions of the siting agreement, or both. All discussions with the applicant or its representatives may be conducted in a closed meeting.

14. Discussion by the Governor and any economic advisory board reviewing forecasts of economic

182 activity and estimating general and nongeneral fund revenues.

183 15. Discussion or consideration of medical and mental records excluded from this chapter pursuant to  
184 subdivision 1 of § 2.2-3705.5.

185 16. Deliberations of the State Lottery Board in a licensing appeal action conducted pursuant to  
186 subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and  
187 discussion, consideration or review of State Lottery Department matters related to proprietary lottery  
188 game information and studies or investigations exempted from disclosure under subdivision 6 of  
189 § 2.2-3705.3 and subdivision 11 of § 2.2-3705.7.

190 17. Those portions of meetings by local government crime commissions where the identity of, or  
191 information tending to identify, individuals providing information about crimes or criminal activities  
192 under a promise of anonymity is discussed or disclosed.

193 18. Those portions of meetings in which the Board of Corrections discusses or discloses the identity  
194 of, or information tending to identify, any prisoner who (i) provides information about crimes or  
195 criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the  
196 apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders  
197 other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

198 19. Discussion of plans to protect public safety as it relates to terrorist activity and briefings by staff  
199 members, legal counsel, or law-enforcement or emergency service officials concerning actions taken to  
200 respond to such activity or a related threat to public safety; or discussion of reports or plans related to  
201 the security of any governmental facility, building or structure, or the safety of persons using such  
202 facility, building or structure.

203 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or  
204 of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the  
205 University of Virginia, acting pursuant to § 23-76.1, or by the Board of the Virginia College Savings  
206 Plan, acting pursuant to § 23-38.80, regarding the acquisition, holding or disposition of a security or  
207 other ownership interest in an entity, where such security or ownership interest is not traded on a  
208 governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential  
209 analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement  
210 system or by the Virginia College Savings Plan or provided to the retirement system or the Virginia  
211 College Savings Plan under a promise of confidentiality, of the future value of such ownership interest  
212 or the future financial performance of the entity, and (ii) would have an adverse effect on the value of  
213 the investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of  
214 the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be  
215 construed to prevent the disclosure of information relating to the identity of any investment held, the  
216 amount invested or the present value of such investment.

217 21. Those portions of meetings in which individual child death cases are discussed by the State Child  
218 Fatality Review team established pursuant to § 32.1-283.1, and those portions of meetings in which  
219 individual child death cases are discussed by a regional or local child fatality review team established  
220 pursuant to § 32.1-283.2, and those portions of meetings in which individual death cases are discussed  
221 by family violence fatality review teams established pursuant to § 32.1-283.3.

222 22. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern  
223 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any  
224 persons to whom management responsibilities for the University of Virginia Medical Center or Eastern  
225 Virginia Medical School, as the case may be, have been delegated, in which there is discussed  
226 proprietary, business-related information pertaining to the operations of the University of Virginia  
227 Medical Center or Eastern Virginia Medical School, as the case may be, including business development  
228 or marketing strategies and activities with existing or future joint venturers, partners, or other parties  
229 with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case  
230 may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such  
231 information would adversely affect the competitive position of the Medical Center or Eastern Virginia  
232 Medical School, as the case may be.

233 23. In the case of the Virginia Commonwealth University Health System Authority, discussion or  
234 consideration of any of the following: the acquisition or disposition of real or personal property where  
235 disclosure would adversely affect the bargaining position or negotiating strategy of the Authority;  
236 operational plans that could affect the value of such property, real or personal, owned or desirable for  
237 ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and  
238 contracts for services or work to be performed by the Authority; marketing or operational strategies  
239 where disclosure of such strategies would adversely affect the competitive position of the Authority;  
240 members of its medical and teaching staffs and qualifications for appointments thereto; and qualifications  
241 or evaluations of other employees.

242 24. Those portions of the meetings of the Health Practitioners' Monitoring Program Committee within  
243 the Department of Health Professions to the extent such discussions identify any practitioner who may

be, or who actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23 is discussed.

26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of wireless E-911 service.

27. Those portions of disciplinary proceedings by any regulatory board within the Department of Professional and Occupational Regulation, Department of Health Professions, or the Board of Accountancy conducted pursuant to § 2.2-4019 or 2.2-4020 during which the board deliberates to reach a decision or meetings of health regulatory boards or conference committees of such boards to consider settlement proposals in pending disciplinary actions or modifications to previously issued board orders as requested by either of the parties.

28. Discussion or consideration of records excluded from this chapter pursuant to subdivision 11 of § 2.2-3705.6 by a responsible public entity or an affected local jurisdiction, as those terms are defined in § 56-557, or any independent review panel appointed to review information and advise the responsible public entity concerning such records.

29. Discussion of the award of a public contract involving the expenditure of public funds, including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body.

30. Discussion or consideration of grant or loan application records excluded from this chapter pursuant to subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or (ii) the Innovation and Entrepreneurship Investment Authority or a grant allocation committee appointed to advise the ~~Innovative Technology~~ *Innovation and Entrepreneurship Investment* Authority on the grant applications.

31. Discussion or consideration by the Commitment Review Committee of records excluded from this chapter pursuant to subdivision 9 of § 2.2-3705.2 relating to individuals subject to commitment as sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

32. [Expired.]

33. Discussion or consideration of confidential proprietary records and trade secrets excluded from this chapter pursuant to subdivision 18 of § 2.2-3705.6.

34. Discussion or consideration by a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary records and trade secrets excluded from this chapter pursuant to subdivision 19 of § 2.2-3705.6.

35. Discussion or consideration by the State Board of Elections or local electoral boards of voting security matters made confidential pursuant to § 24.2-625.1.

36. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of records excluded from this chapter pursuant to subdivision F 1 of § 2.2-3706.

37. Discussion or consideration by the Brown v. Board of Education Scholarship Program Awards Committee of records or confidential matters excluded from this chapter pursuant to subdivision 3 of § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual maximum scholarship award, review and consider scholarship applications and requests for scholarship award renewal, and cancel, rescind, or recover scholarship awards.

38. Discussion or consideration by the Virginia Port Authority of records excluded from this chapter pursuant to subdivision 1 of § 2.2-3705.6.

39. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College Savings Plan acting pursuant to § 23-38.80, or by the Virginia College Savings Plan's Investment Advisory Committee appointed pursuant to § 23-38.79:1 of records excluded from this chapter pursuant to subdivision 25 of § 2.2-3705.7.

40. Discussion or consideration of records excluded from this chapter pursuant to subdivision 3 of § 2.2-3705.6.

41. Discussion or consideration by the Board of Education of records relating to the denial, suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision 13 of § 2.2-3705.3.

305 42. Those portions of meetings of the Virginia Military Advisory Council, the Virginia National  
306 Defense Industrial Authority, or a local or regional military affairs organization appointed by a local  
307 governing body, during which there is discussion of records excluded from this chapter pursuant to  
308 subdivision 12 of § 2.2-3705.2.

309 43. Discussion or consideration by the advisory committee for veterans care centers established by  
310 the Commissioner of the Virginia Department of Veterans Services pursuant to § 2.2-2004.1 of records  
311 excluded from this chapter pursuant to subdivision 28 of § 2.2-3705.7.

312 44. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of  
313 records excluded from this chapter pursuant to subdivision 29 of § 2.2-3705.7.

314 B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a  
315 closed meeting shall become effective unless the public body, following the meeting, reconvenes in open  
316 meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation, or  
317 motion that shall have its substance reasonably identified in the open meeting.

318 C. Public officers improperly selected due to the failure of the public body to comply with the other  
319 provisions of this section shall be de facto officers and, as such, their official actions are valid until they  
320 obtain notice of the legal defect in their election.

321 D. Nothing in this section shall be construed to prevent the holding of conferences between two or  
322 more public bodies, or their representatives, but these conferences shall be subject to the same  
323 procedures for holding closed meetings as are applicable to any other public body.

324 E. This section shall not be construed to (i) require the disclosure of any contract between the  
325 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1  
326 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant  
327 to the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body  
328 empowered to issue industrial revenue bonds by general or special law, to identify a business or industry  
329 to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of  
330 public record at least 30 days prior to the actual date of the board's authorization of the sale or issuance  
331 of such bonds.