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SENATE BILL NO. 242

Offered January 13, 2010

Prefiled January 12, 2010

A BILL to amend and reenact § 2.2-2822 of the Code of Virginia, relating to intellectual property created by state employees.

Patron—Watkins

Referred to Committee on General Laws and Technology

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 intellectual property developed by certain public employees; Creative Commons copyrights.

A. ~~Patents~~ *For purposes of this section, "intellectual property" means patents,* copyrights ~~or~~*, trademarks, and any* materials ~~that were potentially patentable or copyrightable~~ *or work product protected under federal or state intellectual property laws.*

B. Intellectual property 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.

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

1. ~~A policy granting~~ *Grant* state agencies the authority over the protection and release of ~~patents and copyrights~~ *intellectual property* created by employees of the agency~~. Such policy shall authorize state agencies to release all potentially copyrightable materials under the Creative Commons or Open Source Initiative licensing system, as appropriate.~~*, provided that the agency adopts an intellectual property policy consistent with the written policy developed by the Secretary of Administration pursuant to this section;*

2. ~~A provision authorizing state~~ *Require* agencies to seek patent protection only in those instances where the agency reasonably determines the patent has ~~significant~~ *a* commercial value *that, at a minimum, exceeds the cost of obtaining the patent*. ~~The~~ *Within 30 days of submitting a patent application, the* responsible state agency shall file with the Secretary a summary of the ~~expected commercial value of the~~ patent~~.~~*, the cost to the agency to develop the patentable work, the expected cost of the patent application, and the expected value such patent will add to the agency or the Commonwealth;*

3. ~~A procedure authorizing state~~ *Authorize* agencies ~~to determine whether~~ to license or transfer to a state employee any interest in ~~potentially patentable material~~ *intellectual property* developed by that employee during work hours, *within the scope of his employment, or when using state-owned or state-controlled facilities*, as well as to determine the terms of such license or transfer~~.~~*;*

4. ~~A procedure authorizing state~~ *Authorize* agencies to ~~determine whether to~~ license or transfer to a private entity any interest in ~~potentially patentable material~~ *intellectual property* developed by that agency, as well as to determine the terms of such license or transfer*;*

5. Authorize the use of Creative Commons and Open Source Initiative licensing systems, as appropriate; and

6. Include a series of guidelines to assist agencies in developing agency-specific intellectual property policies.

~~C~~*D.* 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~~*E.* 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.

F. A state agency that licenses or transfers any interest in intellectual property to a state employee or private entity shall submit an annual report to the Secretary of Administration that includes a general description of the intellectual property, the terms of the license or transfer, and the amount paid to the agency.

2. That the Secretary of Administration, in consultation with the Secretary of Technology, shall submit a final copy of the intellectual property policy and guidelines required pursuant to this act to the House Committee on Science and Technology, the Senate Committee on General Laws and

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Technology, and the Joint Commission on Technology and Science no later than December 1, 2010.