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HOUSE BILL NO. 2324

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations
on February 4, 2011)

(Patrons Prior to Substitute—Delegates Lingamfelter, Nutter [HB 2250], and Purkey [HB 1639])

A BILL to amend and reenact §§ 2.2-2220, 2.2-2221, 2.2-2233.1, and 2.2-3711 of the Code of Virginia; to amend the Code of Virginia by adding sections numbered 2.2-2220.1 and 2.2-2221.2; and to repeal § 2.2-2233.2 of the Code of Virginia, relating to investment in research and technology in the Commonwealth.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-2220, 2.2-2221, 2.2-2233.1, and 2.2-3711 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 2.2-2220.1 and 2.2-2221.2 as follows:

§ 2.2-2220. Board of directors; members; President.

The Authority shall be governed by a board of directors consisting of 13 15 members appointed as follows: (i) two presidents of the major research state institutions of higher education, and one president representing the other state institutions of higher education, appointed by the Governor; (ii) three nonlegislative citizen members appointed by the Governor; (iii) six nonlegislative citizen members appointed by the General Assembly as follows: three nonlegislative citizen members appointed by the Speaker of the House from a list recommended by the House Committee on Science and Technology and the Joint Commission on Technology and Science; three nonlegislative citizen members appointed by the Senate Committee on Rules from a list recommended by the Senate Committee on General Laws and Technology and the Joint Commission on Technology and Science; and (iv) the Secretary of Technology, the Secretary of Commerce and Trade, and the Secretary of Education, who shall serve ex officio with full voting privileges.

One nonlegislative citizen member appointed by the Governor, one nonlegislative citizen member appointed by the Speaker of the House, and one nonlegislative citizen member appointed by the Senate Committee on Rules shall each have experience as a founding member of a technology company based upon intellectual property that has successfully secured a minimum of \$5 million of institutional venture capital. One nonlegislative citizen member appointed by the Governor, one nonlegislative citizen member appointed by the Speaker of the House, and one nonlegislative citizen member appointed by the Senate Committee on Rules shall each have experience as an institutional venture capital investment partner in a fund with a minimum of \$250 million of limited partner investment and a minimum of five years of fund operations. One nonlegislative citizen member appointed by the Governor, one nonlegislative citizen member appointed by the Speaker of the House, and one nonlegislative citizen member appointed by the Senate Committee on Rules shall each have experience as a senior executive in a technology or scientific research and development company with annual revenues in excess of \$50 million.

The Secretary of Technology, Secretary of Commerce and Trade, and Secretary of Education shall serve a term terms coincident with his term their terms of office. After the initial staggering of terms, nonlegislative citizen members and presidents shall be appointed for terms of two years. Vacancies in the membership of the Board shall be filled in the same manner as the original appointments for the unexpired portion of the term. No nonlegislative citizen member or president shall be eligible to serve for more than three successive two-year terms; however, after the expiration of a term of one year, or after the expiration of the remainder of a term to which appointed to fill a vacancy, three additional terms may be served by such member if appointed thereto. Members of the Board shall be subject to removal from office in like manner as are state, county, town and district officers under the provisions of §§ 24.2-230 through 24.2-238. Immediately after appointment, the members of the Board shall enter upon the performance of their duties.

The Board shall annually elect from among its members a chairman and a vice-chairman. The Board shall also elect annually a secretary, who need not be a member of the Board, and may also elect such other subordinate officers who need not be members of the Board, as it deems proper. The chairman, or in his absence, the vice-chairman, shall preside at all meetings of the Board. In the absence of both the chairman and vice-chairman, the Board shall appoint a chairman pro tempore, who shall preside at such meetings.

The Board shall employ a President of the Authority, who shall serve at the pleasure of the Board, to direct the day-to-day operations and activities of the Authority and carry out such of the powers and duties conferred upon him by the Board. The President and employees of the Authority shall be compensated in the manner provided by the Board and shall not be subject to the provisions of the

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60 Virginia Personnel Act (§ 2.2-2900 et seq.) of this title.

61 § 2.2-2220.1. *Research and Technology Investment Advisory Committee.*

62 A. *The Authority shall be advised by the Research and Technology Investment Advisory Committee*
63 *(the Advisory Committee). The Advisory Committee shall consist of 10 members as follows: the four*
64 *vice-provosts of research at major state institutions of higher education from the state institutions of*
65 *higher education not represented on the the Authority, and six citizen members appointed by the*
66 *Authority. The citizen members shall represent research and technology intensive industries and shall be*
67 *selected for their knowledge of, background in, or experience with basic and applied research, emerging*
68 *technologies, commercialization of the results and outputs of research activities, and the development*
69 *and financing of technology intensive enterprises. A vice-provost of a state institution shall serve until*
70 *the president of the institution that he represents is appointed to serve on the Authority, at which time*
71 *the vice-provost of the state institution no longer represented on the Authority shall become a member*
72 *of the Advisory Committee. Citizen members shall be appointed for terms of four years. A citizen*
73 *member may be appointed for successive terms.*

74 B. *The Advisory Committee shall assist the Authority in reviewing applications for awards from the*
75 *Commonwealth Research Commercialization Fund pursuant to § 2.2-2233.1 and make recommendations*
76 *to the Authority concerning the awards. In reviewing the applications, the Advisory Committee shall*
77 *only recommend for award those applications that, based upon the Commonwealth Research and*
78 *Technology Strategic Roadmap and in the opinion of the Advisory Committee, (i) are based upon sound*
79 *scientific principles and present an opportunity for valid research, (ii) relate to a key industry sector*
80 *identified in the Commonwealth Research and Technology Strategic Roadmap as an area of focus for*
81 *technology investment in the Commonwealth, and (iii) present a significant potential for*
82 *commercialization in the Commonwealth. In the case of an application for an award from the eminent*
83 *researcher recruitment program pursuant to subdivision D 5 of § 2.2-2233.1, the Advisory Committee*
84 *shall only consider researchers who conduct viable research with significant potential for*
85 *commercialization in an area related to a key industry sector identified in the Strategic Roadmap as an*
86 *area of focus for technology investment in the Commonwealth.*

87 § 2.2-2221. Powers of the Authority.

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

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

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

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

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

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

105 6. Establish and maintain satellite offices within the Commonwealth.

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

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

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

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

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

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

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

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

16. Develop a ~~comprehensive research and development strategic roadmap~~ *the Commonwealth Research and Technology Strategic Roadmap, pursuant to § 2.2-2221.2 for the Commonwealth to use to identify research areas worthy of institutional focus and Commonwealth investment in order to promote commercialization and economic development efforts in the Commonwealth. Such a roadmap shall incorporate the strategic plan for each research university in the Commonwealth, identify common themes, and make recommendations for alignment of research and development and economic growth in the Commonwealth. In developing the strategic roadmap, the Authority shall solicit feedback from both public and private institutions of higher education in the Commonwealth, as well as the private sector. The Authority shall review and update the roadmap at least once every three years. The Authority shall submit the roadmap, and any subsequent updates, to the Governor and the chairmen of the Senate Finance Committee, the House Appropriations Committee, the Senate Committee on General Laws and Technology, the House Committee on Science and Technology, and the Joint Commission on Technology and Science.*

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

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

19. Develop guidelines for the *application, review, and award of funds from the Commonwealth Research and Commercialization Fund pursuant to § 2.2-2233.1. These guidelines shall address, at a*

183 minimum, the application process and shall give special emphasis to fostering collaboration between
184 institutions of higher education and partnerships between institutions of higher education and business
185 and industry.

186 20. Appoint the citizen members of the Research and Technology Investment Advisory Committee to
187 pursuant to § 2.2-2220.1.

188 21. Do all acts and things necessary or convenient to carry out the powers granted to it by law.

189 § 2.2-2221.2. Commonwealth Research and Technology Strategic Roadmap.

190 A. The Authority shall develop the Commonwealth Research and Technology Strategic Roadmap (the
191 Roadmap), a comprehensive research and technology strategic roadmap for the Commonwealth to
192 identify research areas worthy of economic development and institutional focus. The goal of the
193 Roadmap shall be to develop a cohesive and comprehensive framework through which to encourage
194 collaboration between the Commonwealth's institutions of higher education, private sector industries,
195 and economic development entities in order to focus on the complete life cycle of research, development,
196 and commercialization. The framework shall serve as a means to identify the Commonwealth's key
197 industry sectors in which investments in technology should be made by the Commonwealth, to identify
198 basic and applied research opportunities in these sectors that exhibit commercial promise, to encourage
199 commercialization and economic development activities in the Commonwealth in these sectors, and to
200 help ensure that investments in basic and applied research are made prudently in focused areas for
201 projects with significant potential for commercialization and economic growth in the Commonwealth. In
202 developing the Roadmap, the Authority shall:

203 1. Review the strategic plan for each research university in the Commonwealth to identify common
204 themes;

205 2. Catalog the Commonwealth's assets in order to identify the areas of research and development in
206 which the Commonwealth has a great likelihood of excelling in applied research and commercialization;

207 3. Make recommendations for the alignment of research and development and economic growth in
208 the Commonwealth, identifying the industry sectors in which the Commonwealth should focus its
209 research, development, investment, and economic development efforts;

210 4. Establish a process for maintaining an inventory of the Commonwealth's current research and
211 development endeavors in both the public and private sector that can be used to attract research and
212 commercialization excellence in the Commonwealth;

213 5. Make recommendations to the Six-Year Capital Outlay Plan Advisory Committee established
214 pursuant to § 2.2-1516 regarding capital construction needs at state institutions of higher education
215 necessary to excel in basic and applied research in identified industry sectors; and

216 6. Develop a policy regarding the ownership and licensing of intellectual property developed through
217 the use of awards from the Commonwealth Research Commercialization Fund.

218 B. In developing the Roadmap, the Authority shall solicit feedback from the Research and
219 Technology Investment Advisory Committee; public and private institutions of higher education in the
220 Commonwealth; federal research and development assets in the Commonwealth including but not limited
221 to NASA Langley Research Center, the Naval Surface Warfare Center, Dahlgren Division, and the
222 Thomas Jefferson National Accelerator Facility (Jefferson Lab); regional technology councils in the
223 Commonwealth; and the private sector.

224 C. The Authority shall review and update the Roadmap at least once every three years.

225 D. The Authority shall submit the Roadmap, and any subsequent updates, to the Governor and the
226 chairmen of the Senate Finance Committee, the House Appropriations Committee, the Senate Finance
227 Committee on General Laws and Technology, the House Committee on Science and Technology, and the
228 Joint Commission on Technology and Science.

229 § 2.2-2233.1. Commonwealth Research Commercialization Fund; continued; purposes; report.

230 A. For purposes of this section:

231 "Guidelines" means guidelines developed and published by the Authority regarding the
232 administration of the Commonwealth Research Commercialization Fund.

233 "Qualified research and technologies" means research programs or technologies substantially focused
234 in the following fields: energy, conservation, environment, microelectronics, robotics and unmanned
235 vehicle systems, advanced shipbuilding, or lifespan biology and medicine identified in the
236 Commonwealth Research and Technology Strategic Roadmap as areas of focus for technology
237 investment in the Commonwealth.

238 "Qualifying institution" means a public or private institution of higher education in the
239 Commonwealth or its associated intellectual property foundation that adopts a policy regarding the
240 ownership, protection, assignment, and use of intellectual property pursuant to § 23-4.3.

241 "SBIR" means the Small Business Innovation Research Program authorized under 15 U.S.C. § 638.

242 "STTR" means the Small Business Technology Transfer Program authorized under 15 U.S.C. § 638.

243 B. From such funds as may be appropriated by the General Assembly and any gifts, grants, or
244 donations from public or private sources, there is created in the state treasury a special nonreverting,

permanent fund, to be known as the Commonwealth Research Commercialization Fund (the Fund), to be administered by the Authority *pursuant to the guidelines*. 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 may consist of grants or 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.

C. Awards from the Fund shall be made by the Authority, *pursuant to the guidelines and upon the recommendation of the Research and Technology Investment Advisory Committee*. The chairman of the Authority shall coordinate the evaluation of proposals and may form review panels with the appropriate science and technology expertise to assist in reviewing applicants for grants or loans from the Fund. *Awards from the Fund shall only be made to applications that further the goals set forth in the Commonwealth Research and Technology Strategic Roadmap.*

Specific guidelines for the award of funds from this program shall be established and maintained by the Authority, in consultation with the Virginia Economic Development Partnership and 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 shall give special emphasis to fostering collaboration between institutions of higher education and partnerships between institutions of higher education and business and industry.

D. Awards from the Fund may be granted for the following programs:

1. For fiscal years beginning with a Fund balance of less than \$7 million, an SBIR matching funds program for Virginia-based technology businesses. Businesses meeting the following criteria shall be eligible to apply for an award:

a. The applicant has received a Phase I SBIR award from the National Institute of Health targeted at the development of qualified research or technologies;

b. The applicant employs fewer than 12 full-time employees;

c. At least 51 percent of the applicant's employees reside in Virginia; and

d. At least 51 percent of the applicant's property is located in Virginia.

Applicants shall be eligible for matching grants of up to \$50,000 of the Phase I award. All applicants shall be required to submit a commercialization plan with their application.

2. For fiscal years beginning with a Fund balance of \$7 million or greater, an SBIR and STTR matching funds program for Virginia-based technology businesses. Businesses meeting the following criteria shall be eligible to apply for an award:

a. The applicant has received an SBIR or STTR award targeted at the development of qualified research or technologies;

b. The applicant employs fewer than 12 full-time employees;

c. At least 51 percent of the applicant's employees reside in Virginia; and

d. At least 51 percent of the applicant's property is located in Virginia.

Applicants shall be eligible for matching grants of up to \$100,000 for Phase I awards and up to \$500,000 for Phase II awards. All applicants shall be required to submit a commercialization plan with their application.

3. A matching funds program to assist qualifying institutions *and other research institutions* in leveraging federal and private funds designated for the commercialization of qualified research or technologies. The chairman of the Authority is authorized to issue letters of financial commitment to assist applicants in leveraging federal and private funds.

4. A facilities enhancement loan program for qualifying institutions and political subdivisions to provide lease or credit guarantees to assist in financing facilities utilized for commercializing qualified research or technologies developed at qualifying institutions. The facilities enhancement loan program shall have the following parameters:

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

b. Loans from the Fund shall take the form of a contractual commitment to the recipient qualifying institution or political subdivision for a line of credit for up to five years, along with an approved schedule of repayment. During the contractual period the recipient qualifying institution or political subdivision may draw upon the line of credit for any expense for which the loan was made, not to exceed the stated amount of the loan award. At the end of the contractual period, the line of credit shall terminate and the outstanding balance of the withdrawals on that line of credit shall become the

306 established basis for that loan.

307 e. During the contractual period, deferred interest shall accumulate on the outstanding balance at a
308 rate of three percent compounded annually. Borrowing institutions or political subdivisions may prepay
309 part or all of any loan received from the Fund without penalty, and, if repayment is completed within
310 the contractual period of the line of credit, the accumulated interest obligation shall be forgiven.

311 d. Repayment of the established basis shall consist of a maximum of 84 equal monthly payments of
312 principal and compounded interest at the determined rate beginning on the first day of the month
313 following the end of the contractual period.

314 A commercialization program to incentivize the commercialization of a product or service related to
315 a qualifying technology. An eligible applicant shall have operations in the Commonwealth, and the
316 project proposed by the applicant shall:

317 a. Commercialize a product or service related to a qualifying technology;

318 b. Have a demonstrable economic development benefit to the Commonwealth;

319 c. Match the award, on at least a one-to-one basis, from other available funds, including funds from
320 an institution of higher education collaborating on the project; and

321 d. Have a reasonable probability of enhancing the Commonwealth's national and global
322 competitiveness.

323 Priority shall be given to those applications that propose projects that (i) are collaborative between
324 private and nonprofit entities, public or private agencies, and qualifying institutions or research
325 institutions; (ii) project a short time to commercialization, although transformative projects with a
326 longer projected time to commercialization shall not be discounted; (iii) have active third-party equity
327 holders; (iv) have technology and management in place that are likely to successfully bring the product
328 or service to the marketplace; or (v) are from applicants who have a history of successful projects
329 funded by the Fund.

330 5. An eminent researcher recruitment program to acquire and enhance research superiority at public
331 qualifying institutions. For purposes of applications pursuant to this subdivision, the applicant shall be a
332 state institution of higher education. In order to qualify for an award, the applicant shall:

333 a. Demonstrate that the researcher being recruited would create research superiority at the
334 institution;

335 b. Demonstrate that the institution making the application has sufficient technology transfer processes
336 and other research capabilities in place to meet the needs of the researcher being recruited;

337 c. Involve a private sector partner with business operations in the Commonwealth;

338 d. Demonstrate that the research conducted by the researcher is in a qualifying technology; and

339 e. Match the award, on at least a one-to-one basis, with 50 percent of the match from the applicant
340 and 50 percent of the match from the private sector partner.

341 E. Any application for an award from the Fund shall include a strategic plan that, at a minimum,
342 identifies (i) how the proposed project fits into the Commonwealth Research and Technology Strategic
343 Roadmap, (ii) other funds that may be reasonably expected from other sources as a result of an award
344 from the Fund, (iii) the potential for commercialization of the research or technology underlying the
345 application, and (iv) opportunities for public and private collaboration.

346 F. No award shall be made from the Fund until a performance agreement or memorandum of
347 understanding is agreed to by the Authority and the recipient of the award memorializing the terms and
348 conditions of the award. Such agreement or memorandum of understanding shall set forth any
349 conditions for receipt of the award, any dates certain for the completion of certain acts by the recipient,
350 and provisions for the repayment of any award, including the rate of interest to be charged if any, if the
351 recipient does not meet the terms of the agreement. In the event that an award is to be made over a
352 multi-year period, the performance agreement or memorandum of understanding shall establish certain
353 benchmarks or performance standards against which to measure the interim success of the project
354 before additional funds are dispersed from the Fund.

355 G. The chairman of the Authority shall provide the Governor and the General Assembly with an
356 annual report to include a detailed list of awards and loans committed, the amount of each approved
357 award or loan, a description of the approved proposals, and the amount of federal or private matching
358 funds anticipated where applicable, a statement concerning how the approved proposals further the
359 goals of the Commonwealth Research and Technology Strategic Roadmap, and an assessment of the
360 effectiveness of the Fund.

361 F. Administrative expenses related to implementing the guidelines and review process may be
362 reimbursed from the Fund.

363 § 2.2-3711. Closed meetings authorized for certain limited purposes.

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

365 1. Discussion, consideration, or interviews of prospective candidates for employment; assignment,
366 appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public
367 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

429 activity and estimating general and nongeneral fund revenues.

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

432 16. Deliberations of the State Lottery Board in a licensing appeal action conducted pursuant to
433 subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and
434 discussion, consideration or review of State Lottery Department matters related to proprietary lottery
435 game information and studies or investigations exempted from disclosure under subdivision 6 of
436 § 2.2-3705.3 and subdivision 11 of § 2.2-3705.7.

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

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

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

450 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or
451 of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the
452 University of Virginia, acting pursuant to § 23-76.1, or by the Board of the Virginia College Savings
453 Plan, acting pursuant to § 23-38.80, regarding the acquisition, holding or disposition of a security or
454 other ownership interest in an entity, where such security or ownership interest is not traded on a
455 governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential
456 analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement
457 system or by the Virginia College Savings Plan or provided to the retirement system or the Virginia
458 College Savings Plan under a promise of confidentiality, of the future value of such ownership interest
459 or the future financial performance of the entity, and (ii) would have an adverse effect on the value of
460 the investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of
461 the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be
462 construed to prevent the disclosure of information relating to the identity of any investment held, the
463 amount invested or the present value of such investment.

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

469 22. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern
470 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any
471 persons to whom management responsibilities for the University of Virginia Medical Center or Eastern
472 Virginia Medical School, as the case may be, have been delegated, in which there is discussed
473 proprietary, business-related information pertaining to the operations of the University of Virginia
474 Medical Center or Eastern Virginia Medical School, as the case may be, including business development
475 or marketing strategies and activities with existing or future joint venturers, partners, or other parties
476 with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case
477 may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such
478 information would adversely affect the competitive position of the Medical Center or Eastern Virginia
479 Medical School, as the case may be.

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

489 24. Those portions of the meetings of the Health Practitioners' Monitoring Program Committee within
490 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~~ *the Research and Technology Investment Advisory Committee* appointed to advise the 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.

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

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

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

561 45. Discussion or consideration by the Virginia Tobacco Indemnification and Community
562 Revitalization Commission of records excluded from this chapter pursuant to subdivision 23 of
563 § 2.2-3705.6.

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

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

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

574 E. This section shall not be construed to (i) require the disclosure of any contract between the
575 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1
576 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant
577 to the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body
578 empowered to issue industrial revenue bonds by general or special law, to identify a business or industry
579 to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of
580 public record at least 30 days prior to the actual date of the board's authorization of the sale or issuance
581 of such bonds.

582 **2. That no awards from the Commonwealth Research Commercialization Fund shall be made**
583 **until the Innovation and Entrepreneurship Investment Authority has developed the strategic**
584 **roadmap as required by § 2.2-2221.1 of the Code of Virginia, and has submitted the roadmap for**
585 **review to the entities set forth in subsection D of § 2.2-2221.1.**

586 **3. That for purposes of determining whether property was developed "wholly or predominantly"**
587 **through the use of state general funds for purposes of § 23-4.4 of the Code of Virginia, awards**
588 **made from the Commonwealth Research Commercialization Fund shall not be considered state**
589 **general funds.**

590 **4. That § 2.2-2233.2 of the Code of Virginia is repealed.**