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SENATE BILL NO. 1038
FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by Senator Hanger
on February 5, 2015)

(Patron Prior to Substitute—Senator Hanger)

A BILL to amend and reenact §§ 2.2-225, 2.2-2220.1, 2.2-2221, and 2.2-2233.1 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 §§ 2.2-225, 2.2-2220.1, 2.2-2221, and 2.2-2233.1 of the Code of Virginia are amended and reenacted 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, councils, and boards: Information Technology Advisory Council, Innovation and Entrepreneurship Investment Authority, Virginia Information Technologies Agency, Virginia Geographic Information Network Advisory Board, and the E-911 Services Board. 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.

11. Review and approve or disapprove, according to the recommendations of the Chief Information Officer (CIO) pursuant to § 2.2-2008, the selection or termination of any Commonwealth information technology project that has been defined or designated as a "major information technology project" pursuant to subdivision 13 and any Commonwealth information technology project with high risk and high complexity.

12. Review and approve statewide technical and data standards for information technology and related systems, including the utilization of nationally recognized technical and data standards for health information technology systems or software purchased by a state agency of the Commonwealth, as recommended by the CIO pursuant to § 2.2-2007.

13. Develop the criteria, requirements, and process for defining a Commonwealth information technology project as a "major information technology project" for the purposes of § 2.2-2006, including

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122 by the Authority, whether wholly or partially completed, at such annual rental and on such terms and
123 conditions as may be determined by the Board, and to sell, transfer or convey any property, real,
124 personal or mixed, tangible or intangible or any interest therein, at any time acquired or held by the
125 Authority on such terms and conditions as may be determined by the board of the Authority.

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

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

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

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

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

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

148 10. Employ, in its discretion, consultants, attorneys, architects, engineers, accountants, financial
149 experts, investment bankers, superintendents, managers and such other employees and agents as may be
150 necessary, and to fix their compensation to be payable from funds made available to the Authority.

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

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

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

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

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

181 16. Develop the Commonwealth Research and Technology Strategic Roadmap, pursuant to
182 § 2.2-2221.2 for the Commonwealth to use to identify research areas worthy of institutional focus and

183 Commonwealth investment in order to promote commercialization and economic development efforts in
184 the Commonwealth.

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

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

196 19. Develop guidelines, *in consultation with the Secretary of Technology*, for the application, review,
197 and award of funds from the Commonwealth Research Commercialization Fund pursuant to
198 § 2.2-2233.1. These guidelines shall address, at a minimum, the application process and shall give
199 special emphasis to fostering collaboration between institutions of higher education and partnerships
200 between institutions of higher education and business and industry.

201 20. ~~Appoint the citizen members of the Research and Technology Investment Advisory Committee~~
202 ~~pursuant to § 2.2-2220.1.~~

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

204 **§ 2.2-2233.1. Commonwealth Research Commercialization Fund; continued; purposes; report.**

205 A. For purposes of this section:

206 "Guidelines" means guidelines developed *in consultation with the Secretary of Technology* and
207 published by the Authority regarding the administration of the Commonwealth Research
208 Commercialization Fund.

209 "Qualified research and technologies" means research programs or technologies identified in the
210 Commonwealth Research and Technology Strategic Roadmap as areas of focus for technology
211 investment in the Commonwealth, which may include but are not limited to the fields of energy,
212 conservation, environment, microelectronics, robotics and unmanned vehicle systems, advanced
213 shipbuilding, or lifespan biology and medicine.

214 "Qualifying institution" means (i) a public or private institution of higher education in the
215 Commonwealth or its associated intellectual property foundation that adopts a policy regarding the
216 ownership, protection, assignment, and use of intellectual property pursuant to § 23-4.3 or (ii) a federal
217 research facility located in the Commonwealth.

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

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

220 B. From such funds as may be appropriated by the General Assembly and any gifts, grants, or
221 donations from public or private sources, there is created in the state treasury a special nonreverting,
222 permanent fund, to be known as the Commonwealth Research Commercialization Fund (the Fund), to be
223 administered by the Authority pursuant to the guidelines. The Fund shall be established on the books of
224 the Comptroller. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it.
225 Any moneys remaining in the Fund at the end of each fiscal year, including interest thereon, shall not
226 revert to the general fund but shall remain in the Fund. Expenditures and disbursements from the Fund,
227 which may consist of grants or loans, shall be made by the State Treasurer on warrants issued by the
228 Comptroller upon written request bearing the signature of the chairman or the vice-chairman of the
229 Authority, or, if so authorized by the Authority, bearing his facsimile signature, and the official seal of
230 the Authority.

231 C. Awards from the Fund shall be made by the Authority, pursuant to the guidelines and upon the
232 recommendation of the Research and Technology Investment Advisory Committee. Awards from the
233 Fund shall only be made to applications that further the goals set forth in the Commonwealth Research
234 and Technology Strategic Roadmap.

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

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

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

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

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

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

244 *The length of time that a business has been incorporated shall have no bearing on an applicant's*

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

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

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

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

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

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

255 *The length of time that a business has been incorporated shall have no bearing on an applicant's*
256 *eligibility for an award.* Applicants shall be eligible for matching grants of up to \$100,000 for Phase I
257 awards and up to \$500,000 for Phase II awards. All applicants shall be required to submit a
258 commercialization plan with their application.

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

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

267 a. Qualifying institutions and political subdivisions may apply to the Fund for loans to the extent that
268 such institution's or political subdivision's outstanding principal balance at any one time does not exceed
269 \$500,000. Loan applications shall include business plans that detail and explain the anticipated uses of
270 funds received and the proposed repayment schedule.

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

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

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

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

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

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

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

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

294 Priority shall be given to those applications that propose projects that (i) are collaborative between
295 private and nonprofit entities, public or private agencies, and qualifying institutions or research
296 institutions; (ii) project a short time to commercialization, although transformative projects with a longer
297 projected time to commercialization shall not be discounted; (iii) have active third-party equity holders;
298 (iv) have technology and management in place that are likely to successfully bring the product or
299 service to the marketplace; or (v) are from applicants who have a history of successful projects funded
300 by the Fund. *The length of time that a business has been incorporated shall have no bearing on an*
301 *applicant's eligibility for an award.*

302 6. 5. An eminent researcher recruitment program to acquire and enhance research superiority at
303 public qualifying institutions. For purposes of applications pursuant to this subdivision, the applicant
304 shall be a state institution of higher education. In order to qualify for an award, the applicant shall:

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

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

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

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

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

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

317 F. No award shall be made from the Fund until a performance agreement or memorandum of
318 understanding is agreed to by the Authority and the recipient of the award memorializing the terms and
319 conditions of the award. Such agreement or memorandum of understanding shall set forth any conditions
320 for receipt of the award, any dates certain for the completion of certain acts by the recipient, and
321 provisions for the repayment of any award, including the rate of interest to be charged if any, if the
322 recipient does not meet the terms of the agreement. In the event that an award is to be made over a
323 multi-year period, the performance agreement or memorandum of understanding shall establish certain
324 benchmarks or performance standards against which to measure the interim success of the project before
325 additional funds are disbursed from the Fund.

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

332 H. Administrative expenses related to implementing the guidelines and review process may be
333 reimbursed from the Fund.

334 **2. That this act shall not be construed to affect existing appointments to the Research and**
335 **Technology Investment Advisory Committee for the terms that have not expired as of July 1,**
336 **2015. However, any new appointments made after July 1, 2015, shall be made in accordance with**
337 **this act.**