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SENATE BILL NO. 1597

Offered January 9, 2019

Prefiled January 9, 2019

A *BILL to amend and reenact §§ 2.2-204, 2.2-2220, and 23.1-3132 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 2.2-2220.2 and 2.2-2232.1, relating to research and development in the Commonwealth.*

Patron—Saslaw

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-204, 2.2-2220, and 23.1-3132 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 2.2-2220.2 and 2.2-2232.1 as follows:

§ 2.2-204. Position established; agencies for which responsible; additional duties.

The position of Secretary of Commerce and Trade (the Secretary) is created. The Secretary shall be responsible to the Governor for the following agencies: Virginia Economic Development Partnership Authority, Virginia International Trade Corporation, Virginia Tourism Authority, *Innovation and Entrepreneurship Investment Authority*, Department of Labor and Industry, Department of Mines, Minerals and Energy, Virginia Employment Commission, Department of Professional and Occupational Regulation, Department of Housing and Community Development, Department of Small Business and Supplier Diversity, Virginia Housing Development Authority, Tobacco Region Revitalization Commission, and Board of Accountancy. The Governor, by executive order, may assign any state executive agency to the Secretary, or reassign any agency listed in this section to another Secretary.

The Secretary shall implement the provisions of the Virginia Biotechnology Research Act (§ 2.2-5500 et seq.).

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

The Authority shall be governed by a board of directors consisting of ~~17~~ 18 members appointed as follows: (i) two presidents of the major research public institutions of higher education, and one president representing the other public institutions of higher education, appointed by the Governor; (ii) three nonlegislative citizen members appointed by the Governor; (iii) eight nonlegislative citizen members appointed by the General Assembly as follows: four 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 and four 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 chairmen of the Virginia Research Investment Committee and the Virginia Biosciences Health Research Corporation, who shall serve ex officio with full voting privileges; and* (v) ~~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 secured private investment 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. 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 \$5 million. 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 be from rural areas of the Commonwealth.

The Secretary of Technology, Secretary of Commerce and Trade, and Secretary of Education shall serve terms coincident with 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

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SB1597

59 successive two-year terms; however, after the expiration of a term of one year, or after the expiration of
60 the remainder of a term to which appointed to fill a vacancy, three additional terms may be served by
61 such member if appointed thereto. Members of the Board shall be subject to removal from office in like
62 manner as are state, county, town and district officers under the provisions of §§ 24.2-230 through
63 24.2-238. Immediately after appointment, the members of the Board shall enter upon the performance of
64 their duties.

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

71 The Board shall employ a President of the Authority, who shall serve at the pleasure of the Board, to
72 direct the day-to-day operations and activities of the Authority and carry out such of the powers and
73 duties conferred upon him by the Board. The President and employees of the Authority shall be
74 compensated in the manner provided by the Board and shall not be subject to the provisions of the
75 Virginia Personnel Act (§ 2.2-2900 et seq.).

76 **§ 2.2-2220.2. Capital Research Investment Advisory Committee.**

77 *A. To assist the Board, Authority, and any nonstock entity established by the Board in fulfilling its*
78 *fiduciary duty as trustee of venture capital funds established under the purview of this article, the Board*
79 *shall appoint a Capital Research Investment Advisory Committee (the Investment Committee) to provide*
80 *sophisticated, objective, and prudent investment advice. The Investment Committee shall consist of nine*
81 *members with significant experience in commercialization or venture capital financing, to be appointed*
82 *by the Board. Each member appointed shall require a two-thirds vote of the Board.*

83 *B. No elected or appointed person shall serve on the Investment Committee.*

84 *C. The disclosure requirements of subsection B of § 2.2-3114 of the State and Local Government*
85 *Conflict of Interest Act shall apply to members of the Investment Committee.*

86 *D. The Investment Committee shall (i) review, evaluate, and monitor investments and investment*
87 *opportunities, (ii) make appropriate recommendations to the Board about investments and investment*
88 *opportunities, and (iii) make recommendations to the Board about asset allocation.*

89 **§ 2.2-2232.1. Virginia Biosciences Health Research Consortium.**

90 *A. There is hereby continued as a nonstock, nonprofit corporation the Virginia Biosciences Health*
91 *Research Corporation (VBHRC). The VBHRC shall advise and act under the authority of the Authority*
92 *established pursuant to this article. The Project Management and Oversight Committee of the VBHRC*
93 *shall serve as an advisory committee to the Authority.*

94 *B. The articles of incorporation of the nonstock corporation shall provide that upon dissolution the*
95 *net assets of the corporation shall be transferred to the Commonwealth. The nonstock corporation shall*
96 *ensure that the economic benefits attributable to the income and property rights arising from any*
97 *transactions in which the nonstock corporation is involved are allocated on a basis that is equitable in*
98 *the reasonable business judgment of the board of directors, with due account being given to the interest*
99 *of the citizens of the Commonwealth and the needs of the nonstock corporation. Any such nonstock*
100 *corporation shall not be deemed to be a state or governmental agency, advisory agency, public body or*
101 *agency or instrumentality for purposes of Chapters 8 (§ 2.2-800 et seq.), 18 (§ 2.2-1800 et seq.), 24*
102 *(§ 2.2-2400 et seq.), 29 (§ 2.2-2900 et seq.), 31 (§ 2.2-3100 et seq.), 37 (§ 2.2-3700 et seq.), 38*
103 *(§ 2.2-3800 et seq.), 43 (§ 2.2-4300 et seq.), 44 (§ 2.2-4400 et seq.), 45 (§ 2.2-4500 et seq.), 46 (§*
104 *2.2-4600 et seq.), and 47 (§ 2.2-4700 et seq.) of this title, Chapter 14 (§ 30-130 et seq.) of Title 30 or*
105 *Chapter 1 (§ 51.1-124.1 et seq.) of Title 51.1. No director, officer or employee of any such nonstock*
106 *corporation or entity be shall deemed to be an officer or employee for purposes of Chapter 31 (§*
107 *2.2-3100 et seq.) of this title. Notwithstanding the foregoing, the Auditor of Public Accounts, or his*
108 *legally authorized representatives, shall annually audit the financial accounts of the Authority and any*
109 *such nonstock corporation entity, provided that the working papers and files of the Auditor of Public*
110 *Accounts relating to such audits shall not be subject to the provisions of The Freedom of Information*
111 *Act (§ 2.2-3700 et seq.).*

112 *C. Notwithstanding the provisions of subsection A, as an entity receiving state funds, any such*
113 *nonstock corporation shall be subject to periodic external review either (i) under the provisions of the*
114 *Legislative Program Review and Evaluation Act (§ 30-64 et seq.) or (ii) by an entity appointed for that*
115 *purpose by the Governor. Any such nonstock corporation shall be deemed to be an institution of higher*
116 *education within the meaning of §§ 23.1-101 and 23.1-103, but only for the limited purposes therein*
117 *stated.*

118 *D. The VBHRC shall continue to operate in the manner set forth in its bylaws, subject to oversight*
119 *by the Board.*

120 **§ 23.1-3132. Virginia Research Investment Committee; report.**

A. There is hereby established the Virginia Research Investment Committee to (i) promote research and development excellence in the Commonwealth; (ii) provide guidance, and coordination as deemed necessary, to existent efforts to support research in the Commonwealth with commercial potential; (iii) approve the Roadmap; ~~and~~ (iv) *provide guidance and assistance to the Innovation and Entrepreneurship Investment Authority and the Capital Research Investment Advisory Committee created pursuant to Article 3 (§ 2.2-2218 et seq.) of Chapter 22 of Title 2.2; and* (v) evaluate and award grants and loans from the Fund pursuant to the provisions of this article.

B. The Committee shall consist of the Director of the Council, the Secretary of Commerce and Trade, the Secretary of Finance, and the staff directors of the House Committee on Appropriations and the Senate Committee on Finance, all of whom shall serve ex officio with voting privileges, and four nonlegislative citizen members of the Board to be appointed as follows: one appointed by the Speaker of the House of Delegates, one appointed by the Senate Committee on Rules, and two appointed by the Governor.

C. Ex officio members shall serve terms coincident with their terms of office. Board members shall serve terms coincident with their terms on the Board. Vacancies shall be filled in the same manner as the original appointments.

D. The Director of the Council shall serve as the chairman of the Committee.

E. The Committee shall report to the Governor and the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance no later than November 1 of each year. The report shall include details about awards made from the Fund in the immediately preceding fiscal year and updates on the research, development, and commercialization efforts resulting from such awards.

2. That existing staff of the Virginia Biosciences Health Research Corporation shall be transferred to the Innovation and Entrepreneurship Investment Authority on the effective date of this act.

3. That pursuant to the authority granted to the Innovation and Entrepreneurship Investment Authority (IEIA) under Article 3 (§ 2.2-2218 et seq.) of Chapter 22 of Title 2.2, the IEIA shall establish a nonstock, nonprofit corporation for the purpose of making seed and early-stage investments and equity or near-equity investments in qualified Virginia Companies. The Board of the IEA shall serve as the Board of such nonstock, nonprofit, and investments by the nonstock, nonprofit entity shall be performed under the guidance of the Capital Research Investment Advisory Committee established pursuant to § 2.2-2220.2 of the Code of Virginia.

4. That upon the effective date of this act, the appointment of the Capital Research Investment Advisory Committee established pursuant to § 2.2-2220.2 of the Code of Virginia as established by this act, and the creation of the nonstock, nonprofit corporation described in the third enactment of this act, any funds held by or equity owned by the Innovation and Entrepreneurship Investment Authority (IEIA) or a nonstock, nonprofit corporation under the control of the IEIA, as a part of the Commonwealth Growth Accelerator Program, shall transferred to the nonstock, nonprofit corporation described in the third enactment of this act.

5. That the Secretary of Commerce and Trade and the Secretary of Education shall convene and oversee a stakeholder group that includes industry leaders, and representatives of state institutions of higher education, Virginia is for Entrepreneurs (VA4E), the Innovation and Entrepreneurship Investment Authority, the Center for Innovative Technology (CIT), the Virginia Biosciences Health Research Corporation (VBHRC), the Virginia Research Investment Committee (VRIC), and any other entities deemed relevant by the Secretaries. The stakeholder group shall (i) review existing programs of CIT, VRIC, and VBHRC and proposed programs in the report presented to VRIC by TEConomy on December 11, 2018; (ii) make recommendations on how to best coordinating existing and proposed initiative; and (iii) make recommendations concerning the most effective and efficient allocation of resources relating to the lifecycle of research and development, including basic, applied, and translational research, entrepreneurship, and commercialization.