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SENATE BILL NO. 1617

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations
on February 11, 2019)

(Patron Prior to Substitute—Senator Ruff)

A BILL to amend and reenact §§ 2.2-3705.4 and 23.1-306 of the Code of Virginia and to amend the Code of Virginia by adding in Subtitle III of Title 23.1 a chapter numbered 12.1, consisting of sections numbered 23.1-1239 through 23.1-1243, relating to creation of the Tech Talent Investment Program.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3705.4 and 23.1-306 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Subtitle III of Title 23.1 a chapter numbered 12.1, consisting of sections numbered 23.1-1239 through 23.1-1243, as follows:

§ 2.2-3705.4. Exclusions to application of chapter; educational records and certain records of educational institutions.

A. The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except as provided in subsection B or where such disclosure is otherwise prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § 2.2-3704.01.

1. Scholastic records containing information concerning identifiable individuals, except that such access shall not be denied to the person who is the subject thereof, or the parent or legal guardian of the student. However, no student shall have access to (i) financial records of a parent or guardian or (ii) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto, that are in the sole possession of the maker thereof and that are not accessible or revealed to any other person except a substitute.

The parent or legal guardian of a student may prohibit, by written request, the release of any individual information regarding that student until the student reaches the age of 18 years. For scholastic records of students under the age of 18 years, the right of access may be asserted only by his legal guardian or parent, including a noncustodial parent, unless such parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For scholastic records of students who are emancipated or attending a public institution of higher education in the Commonwealth, the right of access may be asserted by the student.

Any person who is the subject of any scholastic record and who is 18 years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, such records shall be disclosed.

2. Confidential letters and statements of recommendation placed in the records of educational agencies or institutions respecting (i) admission to any educational agency or institution, (ii) an application for employment or promotion, or (iii) receipt of an honor or honorary recognition.

3. Information held by the Brown v. Board of Education Scholarship Committee that would reveal personally identifiable information, including scholarship applications, personal financial information, and confidential correspondence and letters of recommendation.

4. Information of a proprietary nature produced or collected by or for faculty or staff of public institutions of higher education, other than the institutions' financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or a private concern, where such information has not been publicly released, published, copyrighted or patented.

5. Information held by the University of Virginia or the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, that contain proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, including business development or marketing strategies and activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would be harmful to the competitive position of the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be.

6. Personal information, as defined in § 2.2-3801, provided to the Board of the Virginia College Savings Plan 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 7 (§ 23.1-700 et seq.) of Title 23.1, including personal information related to (i) qualified

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beneficiaries as that term is defined in § 23.1-700, (ii) designated survivors, or (iii) authorized individuals. Nothing in this subdivision shall be construed to prevent disclosure or publication of information in a statistical or other form that does not identify individuals or provide personal information. Individuals shall be provided access to their own personal information.

For purposes of this subdivision:

"Authorized individual" means an individual who may be named by the account owner to receive information regarding the account but who does not have any control or authority over the account.

"Designated survivor" means the person who will assume account ownership in the event of the account owner's death.

7. Information maintained in connection with fundraising activities by or for a public institution of higher education that would reveal (i) personal fundraising strategies relating to identifiable donors or prospective donors or (ii) wealth assessments; estate, financial, or tax planning information; health-related information; employment, familial, or marital status information; electronic mail addresses, facsimile or telephone numbers; birth dates or social security numbers of identifiable donors or prospective donors. Nothing in this subdivision, however, shall be construed to prevent the disclosure of information relating to the amount, date, purpose, and terms of the pledge or donation, or the identity of the donor unless the donor has requested anonymity in connection with or as a condition of making a pledge or donation. The exclusion provided by this subdivision shall not apply to protect from disclosure (i) the identities of sponsors providing grants to or contracting with the institution for the performance of research services or other work or (ii) the terms and conditions of such grants or contracts.

8. Information held by a threat assessment team established by a local school board pursuant to § 22.1-79.4 or by a public institution of higher education pursuant to § 23.1-805 relating to the assessment or intervention with a specific individual. However, in the event an individual who has been under assessment commits an act, or is prosecuted for the commission of an act that has caused the death of, or caused serious bodily injury, including any felony sexual assault, to another person, such information of the threat assessment team concerning the individual under assessment shall be made available as provided by this chapter, with the exception of any criminal history records obtained pursuant to § 19.2-389 or 19.2-389.1, health records obtained pursuant to § 32.1-127.1:03, or scholastic records as defined in § 22.1-289. The public body providing such information shall remove personally identifying information of any person who provided information to the threat assessment team under a promise of confidentiality.

9. *Records provided to the Governor or the designated reviewers from a qualified institution, as those terms are defined in § 23.1-1239, related to a proposed memorandum of understanding, or proposed amendments to a memorandum of understanding, submitted pursuant to Chapter 12.1 (§ 23.1-1239 et seq.) of Title 23.1. A memorandum of understanding entered into pursuant to such chapter shall be subject to public disclosure after it is agreed to and signed by the Governor.*

B. The custodian of a scholastic record shall not release the address, phone number, or email address of a student in response to a request made under this chapter without written consent. For any student who is (i) 18 years of age or older, (ii) under the age of 18 and emancipated, or (iii) attending an institution of higher education, written consent of the student shall be required. For any other student, written consent of the parent or legal guardian of such student shall be required.

§ 23.1-306. Public institutions of higher education; six-year plans.

A. The governing board of each public institution of higher education shall (i) develop and adopt biennially in odd-numbered years and amend or affirm biennially in even-numbered years a six-year plan for the institution; (ii) submit a preliminary version of such plan to the Council, the General Assembly, the Governor, and the Chairmen of the House Committee on Appropriations, the House Committee on Education, the Senate Committee on Education and Health, and the Senate Committee on Finance no later than July 1 of each odd-numbered year; and (iii) submit preliminary amendments to or a preliminary affirmation of each such plan to the Council, the General Assembly, the Governor, and the Chairmen of the House Committee on Appropriations, the House Committee on Education, the Senate Committee on Education and Health, and the Senate Committee on Finance no later than July 1 of each even-numbered year. Each such preliminary plan and preliminary amendment to or preliminary affirmation of such plan shall include a report of the institution's active contributions to efforts to stimulate the economic development of the Commonwealth, the area in which the institution is located, and, for those institutions subject to a management agreement set forth in Article 4 (§ 23.1-1004 et seq.) of Chapter 10, the areas that lag behind the Commonwealth in terms of income, employment, and other factors. Each such preliminary plan and preliminary amendment to or preliminary affirmation of such plan shall be submitted as a report document as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports. No such preliminary plan, amendments, or affirmation shall be posted on the General Assembly's website.

B. The Secretary of Finance, the Secretary of Education, the Director of the Department of Planning and Budget, the Director of the Council, *the President of the Virginia Economic Development*

Partnership, the Staff Director of the House Committee on Appropriations, and the Staff Director of the Senate Committee on Finance, or their designees, shall review each institution's preliminary plan, amendments, or affirmation and provide comments to the institution on such plan, amendments, or affirmation by September 1 of the relevant year. Each institution shall respond to any such comments by October 1 of that year and submit a finalized version of such plan, amendments, or affirmation to the Council, the General Assembly, the Governor, and the Chairmen of the House Committee on Appropriations, the House Committee on Education, the Senate Committee on Education and Health, and the Senate Committee on Finance no later than December 1 of that year. Each such finalized version shall be submitted as a report document as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

C. Each plan shall be structured in accordance with, and be consistent with, the objective and purposes of this chapter set forth in § 23.1-301 and the criteria developed pursuant to § 23.1-309 and shall be in a form and manner prescribed by the Council, in consultation with the Secretary of Finance, the Secretary of Education, the Director of the Department of Planning and Budget, the Director of the Council, the President of the Virginia Economic Development Partnership, the Staff Director of the House Committee on Appropriations, and the Staff Director of the Senate Committee on Finance, or their designees.

D. Each six-year plan shall (i) address the institution's academic, financial, and enrollment plans, including the number of Virginia and non-Virginia students, for the six-year period; (ii) indicate the planned use of any projected increase in general fund, tuition, or other nongeneral fund revenues; (iii) be based upon any assumptions provided by the Council, following consultation with the Department of Planning and Budget and the staffs of the House Committee on Appropriations and the Senate Committee on Finance, for funding relating to state general fund support pursuant to §§ 23.1-303, 23.1-304, and 23.1-305 and subdivision 9; (iv) be aligned with the institution's six-year enrollment projections; and (v) include:

1. Financial planning reflecting the institution's anticipated level of general fund, tuition, and other nongeneral fund support for each year of the next biennium;

2. The institution's anticipated annual tuition and educational and general fee charges required by (i) degree level and (ii) domiciliary status, as provided in § 23.1-307;

3. Plans for providing financial aid to help mitigate the impact of tuition and fee increases on low-income and middle-income students and their families as described in subdivision 9, including the projected mix of grants and loans;

4. Degree conferral targets for undergraduate Virginia students;

5. Plans for optimal year-round use of the institution's facilities and instructional resources;

6. Plans for the development of an instructional resource-sharing program with other public institutions of higher education and private institutions of higher education;

7. Plans with regard to any other incentives set forth in § 23.1-305 or any other matters the institution deems appropriate;

8. The identification of (i) new programs or initiatives including quality improvements and (ii) institution-specific funding based on particular state policies or institution-specific programs, or both, as provided in subsection C of § 23.1-307; and

9. An institutional student financial aid commitment that, in conjunction with general funds appropriated for that purpose, provides assistance to students from both low-income and middle-income families and takes into account the information and recommendations resulting from the review of federal and state financial aid programs and institutional practices conducted pursuant to subdivisions B 2 and C 1 of § 23.1-309.

E. In developing such plans, each public institution of higher education shall consider potential future impacts of tuition increases on the Virginia College Savings Plan and ABLE Savings Trust Accounts (§ 23.1-700 et seq.) and shall discuss such potential impacts with the Virginia College Savings Plan. The chief executive officer of the Virginia College Savings Plan shall provide to each institution the Plan's assumptions underlying the contract pricing of the program.

CHAPTER 12.1.

TECH TALENT INVESTMENT PROGRAM.

§ 23.1-1239. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Designated reviewers" means the same public officials, or their designees, set forth in subsection B of § 23.1-306 who are responsible for reviewing the six-year plans submitted by public institutions of higher education pursuant to § 23.1-306.

"Eligible degree" means a new bachelor's or master's degree, or a certificate issued by a baccalaureate public institution of higher education in association with a bachelor's degree, in the field

183 of computer science, computer engineering, or other closely related fields of study, or that otherwise
184 aligns with traded-sector, technology-focused growth opportunities identified by the Virginia Economic
185 Development Partnership Authority.

186 "Fund" means the Tech Talent Investment Fund.

187 "Grant" means a grant paid from the Tech Talent Investment Fund.

188 "Memorandum of understanding" means the negotiated instrument entered into by a qualified
189 institution and the Commonwealth, regardless of whether the terms of the memorandum of
190 understanding are encompassed or included within any other institutional partnership or performance
191 agreement required by law. A memorandum of understanding shall contain criteria for eligible degrees,
192 eligible expenses, and degree production goals for a period ending in 2039.

193 "New bachelor's and master's degrees" means the awarding of eligible degrees produced by a
194 qualified institution to meet the degree production goals set forth in a qualified institution's
195 memorandum of understanding.

196 "Qualified institution" means (i) any associate-degree-granting public institution of higher education,
197 as defined in § 23.1-100, that has a transfer plan that culminates in an eligible degree and (ii) any
198 baccalaureate public institution of higher education, as defined in § 23.1-100.

199 **§ 23.1-1240. Tech Talent Investment Fund created.**

200 A. There is hereby created in the state treasury a special nonreverting fund to be known as the Tech
201 Talent Investment Fund. The Fund shall be established on the books of the Comptroller. All funds
202 appropriated for the Fund shall be paid into the state treasury and credited to the Fund. Interest earned
203 on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the
204 Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but
205 shall remain in the Fund. Moneys in the Fund shall be used solely to fund grants approved pursuant to
206 the provisions of this chapter. Expenditures and disbursements from the Fund shall be made by the State
207 Treasurer on warrants issued by the Comptroller.

208 B. Moneys in the Fund shall be used to support the efforts of qualified institutions to increase by
209 fiscal year 2039 the number of new eligible degrees by at least 25,000 more degrees than the number of
210 such degrees awarded in 2018 and to improve the readiness of graduates to be employed in
211 technology-related fields and fields that align with traded-sector growth opportunities identified by the
212 Virginia Economic Development Partnership. Funds from the Fund may be used to support admissions
213 and advising programs designed to convey labor market information to students to guide decisions to
214 enroll in eligible degree programs and academic programs and to fund facility construction, renovation,
215 and enhancement and equipment purchases related to the initiative to increase the number of eligible
216 degrees awarded.

217 **§ 23.1-1241. Approval and update of memorandum of understanding.**

218 A. In order to support the goal of the creation of at least 25,000 new eligible degrees by 2039, the
219 amount of grants available under this chapter shall be calculated in accordance with a memorandum of
220 understanding negotiated with each qualified institution. Each memorandum of understanding shall
221 contain criteria for eligible degrees, eligible expenses, and degree production goals for the institution to
222 reach by 2039.

223 B. Each memorandum of understanding shall be structured in accordance with and be consistent
224 with the objectives and purposes of this chapter and the criteria and requirements developed by, and in
225 the form and manner prescribed by, the Secretary of Finance in consultation with the other designated
226 reviewers. Such criteria and requirements shall include:

227 1. The submission of an enrollment plan by the qualified institution detailing the number of eligible
228 degrees produced between July 1, 2013, and June 30, 2018;

229 2. A detailed plan of (i) how the qualified institution proposes to materially increase the enrollment,
230 retention, and graduation of students pursuing eligible degrees, (ii) the resources necessary to
231 accomplish such increase in enrollment, retention, and graduation, and (iii) how the qualified institution
232 plans to track new enrollment;

233 3. An accounting of the anticipated number of in-state and out-of-state students enrolling in eligible
234 degree programs;

235 4. The existing capacity of current eligible degree programs, and an estimate of the amount of
236 funding necessary to grow the qualified institution's enrollment capacity pursuant to the plan submitted
237 pursuant to subdivision 2;

238 5. Where applicable, proposed plans to partner with other qualified institutions to provide courses or
239 programs that will lead to the completion of an eligible degree;

240 6. Where applicable, existing or proposed articulation agreements with the Virginia Community
241 College System to provide guaranteed admission for qualified students with an associate degree for
242 transfer into an eligible degree program;

243 7. A proposed reallocation of existing funds held by or appropriated to the qualified institution to
244 meet increased enrollment, retention, and graduation goals in eligible degree programs; and

8. Any other information deemed relevant.

C. The designated reviewers shall review each qualified institution's proposed memorandum of understanding, or amendments thereto; provide comments or affirmation to the qualified institution by September 1 of the applicable year; and forward the proposed memorandum of understanding and any comments or affirmations to the Governor for approval of specific funding recommendations.

D. The Secretary of Finance, in consultation with the other designated reviewers, shall make a recommendation regarding the amount of annual grant payments for which a qualified institution may be eligible pursuant to its memorandum of understanding. In determining the appropriate amount of such grants, the Secretary and designated reviewers shall consider (i) the actual cost of eligible degrees at the qualified institution, (ii) the number of students enrolled in qualified degree programs adjusted for actual graduation rates at the qualified institution, (iii) tuition revenues generated by in-state and out-of-state students in eligible degree programs at the qualified institution, and (iv) the reallocation of other funds held by or appropriated to the qualified institution for eligible new degree programs. A qualified institution shall be eligible to receive grants pursuant to this chapter, and subject to appropriation, upon signature of the memorandum of understanding by the Governor.

E. A qualified institution with an approved memorandum of understanding may request an update to its memorandum of understanding no more than once annually and no later than July 1 of each year. The designated reviewers shall review the request and determine if an update is warranted. The Secretary of Finance, in consultation with the other designated reviewers, may request that a qualified institution update its agreement at any point during the year. No amendment to a memorandum of understanding shall be final until signed by the Governor.

F. A new or amended memorandum of understanding shall be approved and signed pursuant to subsection D no later than November 1 in order for a qualified institution to apply for a grant in the next fiscal year.

§ 23.1-1242. Eligibility for grant payments.

A. A qualified institution with a memorandum of understanding approved and signed in accordance with the provisions of § 23.1-1241 shall be eligible to apply for a grant each fiscal year beginning with the Commonwealth's fiscal year beginning July 1, 2019, through the Commonwealth's fiscal year starting on July 1, 2038. Grants available under this chapter shall be paid to the qualified institution from the Fund, subject to appropriation by the General Assembly, during each such fiscal year, contingent upon the qualified institution's meeting the requirements set forth in its memorandum of understanding. If the total amount of moneys appropriated to the Fund in a fiscal year is less than anticipated, grants to all qualified institutions under this chapter may be prorated to reflect the actual amount appropriated.

B. To apply for a grant each year, a qualified institution shall report to the Secretary of Finance regarding the qualified institution's progress on increasing the number of eligible degrees and meeting the requirements pursuant to its memorandum of understanding. Such report shall include, at a minimum: (i) progress on increasing the number of eligible degrees, as set forth in the memorandum of understanding, including actual enrollment in qualified degree programs; (ii) the aggregate number of new eligible degrees created and maintained as of the last day of the calendar year that immediately precedes the date of the application, including information related to the retention of students who enrolled in the calendar year immediately preceding the application; and (iii) the average annual cost incurred in the production of the new eligible degrees described in clause (ii). For applications filed four years or more after the date of a qualified institution's original memorandum of understanding, the qualified institution shall also include actual graduation rates from qualified degree programs. The report shall be filed with the Secretary no later than May 1 of the year following the calendar year upon which the report is based, as an application for a grant in the fiscal year beginning on the immediately following July 1. Failure to meet the reporting deadline shall result in a deferral of a payment in the upcoming fiscal year.

C. A report received pursuant to subsection B shall be reviewed by the designated reviewers. Within 60 days of receipt of the report, the Secretary of Finance, in consultation with the other designated reviewers, shall certify to the Comptroller and the qualified institution the amount of the grant payment to be paid to the qualified institution, subject to appropriation. Payment of such grant shall be made by check issued by the State Treasurer on warrant of the Comptroller in the fiscal year immediately following the submission of such application, as provided in the memorandum of understanding. The Comptroller shall not draw any warrants to issue checks for the grant installments under this section without a specific appropriation for the same.

D. As a condition of receipt of grant payments, a qualified institution shall make available for inspection to the designated reviewers all documents relevant and applicable to determining whether the qualified institution has met the requirements for the receipt of a grant as set forth in this chapter and subject to the memorandum of understanding.

306 *E. Failure of a qualified institution to meet the goals, metrics, and requirements set forth in its*
307 *memorandum of understanding shall result in the adjustment of any future awards to the qualified*
308 *institution to reflect such discrepancy.*

309 **§ 23.1-1243. Annual report.**

310 *The Secretary of Finance, in consultation with the other designated reviewers, shall submit a report*
311 *by December 1 of each year to the Chairmen of the House Committee on Appropriations and the Senate*
312 *Committee on Finance. Such report shall provide an update as to the progress of each qualified*
313 *institution in meeting the goals set forth in its memorandum of understanding and the aggregate amount*
314 *of grants awarded to the qualified institution pursuant to this chapter.*