

# 2006 RECONVENED SESSION

## SENATE SUBSTITUTE

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### SENATE BILL NO. 259

#### AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Governor  
on April 10, 2006)

(Patron Prior to Substitute—Senator Wagner)

*A BILL to amend and reenact §§ 2.2-2233.2, 23-4.3, and 23-4.4 of the Code of Virginia and to repeal § 23-9.10:4 of the Code of Virginia, relating to intellectual property developed at public institutions of higher education.*

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 2.2-2233.2, 23-4.3, and 23-4.4 of the Code of Virginia are amended and reenacted as follows:**

§ 2.2-2233.2. Biotechnology Commercialization Loan Fund; created; purposes; report.

A. From such funds as may be appropriated by the General Assembly and any gifts, grants, or donations from public or private sources, there is created in the state treasury a special nonreverting, permanent fund, to be known as the Biotechnology Commercialization Loan Fund (the Fund), to be administered by the Authority. 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 shall consist of 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.

B. Moneys in the Fund shall be used for the sole purpose of financing technology transfer and commercialization activities related to biotechnology inventions made, solely or in cooperation with other organizations, at qualifying institutions. Such activities shall include, but not be limited to, legal and business consulting services and expenses, including employee compensation, relating to assessing the patentability of inventions, obtaining patent protection for such inventions in the United States and internationally, marketing for such inventions and patents thereon to potential licensees, and negotiating licensing or commercialization agreements with licensees, as well as development of new technology transfer and commercialization programs at qualifying institutions.

The maximum amount of any loans outstanding under the Fund shall be \$3,000,000.

C. Qualifying institutions may apply to the Fund for loans to the extent that such institution'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.

Loans from the Fund shall take the form of a contractual commitment to the recipient qualifying institution for a line of credit for up to three years, along with an approved schedule of repayment. During the contractual period the recipient qualifying institution 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 established basis for that loan.

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

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

D. Decisions to make loans to applicants from the Fund shall be made by a panel, which shall consist of the President of the Center for Innovative Technology, the Director of the Department of Planning and Budget and the Executive Director of the Virginia Economic Development Partnership, or their designees. The President of the Center for Innovative Technology, or his designee, shall serve as chair. The panel may seek the advice of experts in technology, business, technology transfer or other relevant fields as appropriate in devising guidelines for the implementation of this loan program as well as in making loan decisions.

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.

E. A recipient of a loan from the Fund shall report annually to the panel on the uses of loan

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60 proceeds during the previous year and on plans for the use of any additional funds it may plan to draw.  
61 Such reports shall be filed for so long as the recipient owes money to the Fund.

62 F. The chairman of the Authority shall report annually to the Governor and the General Assembly on  
63 activities of the Fund, including a detailed list of awards committed, the amount and description of each  
64 approved award, and an assessment of the effectiveness of the Fund in encouraging the  
65 commercialization of bioscience and biotechnology inventions made at Virginia institutions of higher  
66 education.

67 G. A record transmitted or delivered by a loan applicant or a loan recipient to a public body in the  
68 conduct of its duties under this section shall be excluded from disclosure under the Virginia Freedom of  
69 Information Act to the extent such record reveals information that (a) is the property of the submitting  
70 party, (b) has independent economic value to the owner that causes it to be maintained in secrecy by the  
71 owner, and (c) is clearly and specifically identified in writing as proprietary, confidential information at  
72 the time of its delivery or transmission to the public body. Nothing in this paragraph shall be construed  
73 to prevent the disclosure of information regarding the financial or administrative oversight of the Fund  
74 by the Authority.

75 H. For purposes of this section:

76 "Determined rate" means the rate of interest paid by the Commonwealth on the most recent sale of  
77 tax-exempt bonds backed by the full faith and credit of the Commonwealth.

78 "Qualifying institution" means an institution of higher education in the Commonwealth or its  
79 associated intellectual property foundation that maintains a recognized program of technology transfer,  
80 licensing, or commercialization in conformance with the guidelines established by the State Council of  
81 Higher Education for Virginia pursuant to § 23-9.10:4 adopts a policy regarding the ownership,  
82 protection, assignment, and use of intellectual property pursuant to § 23-4.3.

83 I. No loan shall be made to any entity which conducts human stem cell research from human  
84 embryos, or for any loan to conduct such research; however, research conducted using adult stem cells  
85 may be funded.

86 § 23-4.3. Adoption of patent and copyright policies; employees to be bound by such policies.

87 A. The boards of visitors of state-supported institutions of higher education and the State Board for  
88 Community Colleges shall adopt patent and copyright policies regarding the ownership, protection,  
89 assignment, and use of intellectual property consistent with the policy guidelines promulgated by the  
90 State Council of Higher Education working in cooperation with the state-supported institutions of higher  
91 education pursuant to § 23-9.10:4. Such policies shall be submitted to the Council.

92 B. All employees of state-supported institutions of higher education, including the Virginia  
93 Community College System, as a condition of employment, shall be bound by the patent and copyright  
94 intellectual property policies of the institution employing them. Anyone using facilities of a  
95 state-supported institution who has not otherwise entered into a written contract with the institution  
96 concerning such use shall be subject to the institution's patent and copyright policies where the  
97 institution's Board of Visitors, the State Board for Community Colleges or their designees determine that  
98 such use constitutes a significant use of the institution's facilities.

99 C. Upon adoption, the boards of visitors of state-supported institutions of higher education, including  
100 the State Board for Community Colleges, shall provide a copy of their intellectual property policies to  
101 the Governor and the Joint Commission on Technology and Science.

102 D. For purposes of this section, "intellectual property" means (i) a potentially patentable machine,  
103 article of manufacture, composition of matter, process, or improvement in any of those; (ii) an issued  
104 patent; (iii) a legal right that inheres in a patent; or (iv) anything that is copyrighable.

105 § 23-4.4. Authorization to transfer interest; Governor's approval required under certain circumstances.

106 A. The Boards of Visitors boards of visitors, the State Board for Community Colleges, or their  
107 designees may transfer are authorized to assign any interest they possess in patents and copyrights  
108 intellectual property or in materials in which the institution claims an interest, provided such assignment  
109 is in accordance with the terms of the institution's intellectual property policies adopted pursuant to  
110 subsection A of § 23-4.3 under its patent or copyright policy. However, the Governor's prior written  
111 approval shall be required for transfers of such property developed wholly or significantly predominately  
112 through the use of state general funds, exclusive of capital assets, and either (i) such property was  
113 developed by an employee of the institution acting within the scope of his assigned duties, or (ii) such  
114 property is to be transferred to an entity other than the Innovative Technology Authority, an entity  
115 whose purpose is to manage intellectual properties on behalf of nonprofit organizations, colleges and  
116 universities, or an entity whose purpose is to benefit the respective institutions. The Governor may  
117 attach conditions to these transfers as he deems necessary. In the event the Governor does not approve  
118 such transfer, the materials shall remain the property of the respective institutions and may be used and  
119 developed in any manner permitted by law. The State Council of Higher Education working in  
120 cooperation with the state-supported institutions of higher education and in accordance with § 23-9.10:4  
121 shall adopt a uniform statement defining (i) the conditions under which a significant use of general

funds occurs and (ii) the circumstances constituting an assigned duty.

B. Notwithstanding subsection A, the Governor's approval is not required to transfer such property to an entity described in clause (ii) of subsection A if (i) the interest was developed without the use of federal funds, (ii) such entity makes a clear and convincing case to the relevant board that its ownership of the interest is critical to its ability to commercialize that interest, and (iii) the institution receives, at a minimum, compensation equal to the anticipated revenue stream of licensing the interest.

*The president of each state-supported institution of higher education, including the chancellor of the Virginia Community College System, shall report annually to the Governor and the Joint Commission on Technology and Science regarding the assignment of any intellectual property interests by that institution.*

**2. That § 23-9.10:4 of the Code of Virginia is repealed.**

**3. That the Department of Planning and Budget working in cooperation with the state-supported institutions of higher education and the Joint Commission on Technology and Science shall issue by December 1, 2006, guidelines defining (i) the conditions under which projects are to be considered wholly or predominately funded by the general fund and (ii) procedures for an expedited review by the Governor of relevant transfers of intellectual properties.**