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SENATE BILL NO. 1322

Offered January 12, 2011

Prefiled January 12, 2011

A *BILL to amend and reenact § 2.2-2101 of the Code of Virginia, as it is currently effective and as it may become effective, and §§ 2.2-2221, 2.2-3705.6 and 2.2-3711 of the Code of Virginia; to amend the Code of Virginia by adding in Title 2.2 a chapter numbered 4.3, containing articles numbered 1 and 2, consisting of sections numbered 2.2-436 through 2.2-444; and to repeal §§ 2.2-2233.1 and 2.2-2233.2 of the Code of Virginia, relating to investment in research and technology in the Commonwealth.*

Patrons—Newman; Delegate: Byron

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-2101 of the Code of Virginia, as it is currently effective and as it shall become effective, and §§ 2.2-2221, 2.2-3705.6 and 2.2-3711 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 2.2 a chapter numbered 4.3, containing articles numbered 1 and 2, consisting of sections numbered 2.2-436 through 2.2-444, as follows:

CHAPTER 4.3.

VIRGINIA RESEARCH AND TECHNOLOGY INVESTMENT PROGRAM.

Article 1.

General Provisions.

§ 2.2-436. Purpose.

A. The Virginia Research and Technology Investment Program is intended to develop and diversify the economy of the Commonwealth by expediting innovation and commercialization of products and services, increasing the applied technology research capabilities of state institutions of higher education and other research entities in the Commonwealth, and attracting leading scholars in emerging technologies to state institutions of public education.

B. The Commonwealth Research Commercialization Fund, as set forth in Article 2 of this chapter, and the Commonwealth GAP Fund Program, administered by the Innovation and Entrepreneurship Investment Authority, shall collectively be referred to as the Virginia Research and Technology Investment Program.

C. Any money appropriated to the Virginia Research and Technology Investment Program in the biennial budget shall be allocated as follows:

1. Eighty percent of the appropriation shall be allocated to the Commonwealth Research Commercialization Fund, as set forth in Article 2 of this chapter; and

2. Twenty percent of the appropriation shall be allocated to the Commonwealth GAP Fund Program administered by the Innovation and Entrepreneurship Investment Authority.

However, in any given fiscal year, the Secretary of Finance may, with approval of the Governor and upon the recommendation of the Approval Committee, transfer moneys between the funds in the Virginia Research and Technology Investment Program if the Approval Committee determines that there is an urgent need for a different allocation of funds.

§ 2.2-437. Definitions.

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

"Agreement" means a loan agreement, performance agreement, memorandum of understanding or other document agreed to by the Approval Committee and the recipient memorializing the terms and conditions of an award. The agreement shall set forth any conditions for receipt of the award; any dates certain for the completion of certain acts by the recipient; provisions for the repayment of any award, including the rate of interest to be charged, if the recipient does not meet the terms of the agreement; and, if appropriate, provision for the sharing of any licensing or intellectual property rights or royalties resulting from the award. The agreement shall also set forth with specificity the authorized uses for the award. If any portion of an award is used to build or acquire a capital improvement, the Approval Committee may require that the award recipient provide sufficient security as a condition of granting the award and require that if the capital improvement is sold within a time period specified in the agreement that the award recipient will repay the award with interest pursuant to the terms of the agreement.

"Approval Committee" means the Commonwealth Research Commercialization Fund Approval

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59 Committee established pursuant to § 2.2-442.

60 "Award" means a grant, loan, or other form of financing provided to an application selected by the
 61 Approval Committee. For purposes of the Commercialization Subfund, an award shall be in the form of
 62 licensing agreements concerning intellectual property developed with the award, debt instruments, or
 63 royalty financing. For purposes of the Research Match Subfund, an award shall be in the form of
 64 grants, licensing agreements concerning intellectual property developed with the award, debt
 65 instruments, or royalty financing, so long as any royalty financing agreement contains a provision that
 66 the recipient will repay at a minimum the principal amount of any loan regardless of other terms of the
 67 royalty agreement. For purposes of the Eminent Scholar Subfund, an award shall be in the form of
 68 grants. Other types of funding or contributions may be made with the authorization of the Approval
 69 Committee and in accordance with Article X, Section 10 of the Constitution of Virginia.

70 "Commercialization Subfund" means the subfund of the Commonwealth Research Commercialization
 71 Fund Commercialization Subfund established pursuant to § 2.2-439.

72 "Eminent Scholar Subfund" means the Commonwealth Research Commercialization Fund Eminent
 73 Scholar Subfund established pursuant to § 2.2-441.

74 "Fund" means the Commonwealth Research Commercialization Fund established pursuant to
 75 § 2.2-438.

76 "Guidelines" mean guidelines developed and published by the Review Committee and approved by
 77 the Governor concerning, at a minimum, the application process, the review process, the award process,
 78 and the monitoring process.

79 "Institution of higher education" means any public or private nonprofit four-year college or
 80 university that physically holds classes in the Commonwealth.

81 "Research Match Subfund" means the Commonwealth Research Commercialization Fund Research
 82 Match Subfund established pursuant to § 2.2-440.

83 "Review Committee" means the Commonwealth Research Commercialization Fund Review Committee
 84 established pursuant to § 2.2-443.

85 "Special technology industry" means emerging industry sectors related to biomedical sciences,
 86 information technology services, chemicals and materials, clean energy, the environment, and other
 87 sectors as determined by the Approval Committee and included in the guidelines.

88 "Vetting Committee" means the Commonwealth Research Commercialization Fund Vetting Committee
 89 established pursuant to § 2.2-444.

90 Article 2.

91 Commonwealth Research Commercialization Fund.

92 § 2.2-438. Commonwealth Research Commercialization Fund; creation.

93 A. From such funds as may be appropriated by the General Assembly, any gifts, grants, or donations
 94 from public or private sources, any other funds credited to the Fund as a result of an award agreement,
 95 or funds generated from the investment of moneys in the Funds, there is created in the state treasury a
 96 special nonreverting, permanent fund, to be known as the Commonwealth Research Commercialization
 97 Fund (the Fund), which shall consist of the Commercialization Subfund, the Research Match Subfund,
 98 and the Eminent Scholar Subfund. The Fund shall be established on the books of the Comptroller.
 99 Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys
 100 remaining in the Fund at the end of each fiscal year, including interest thereon, shall not revert to the
 101 general fund but shall remain in the Fund.

102 B. Funds from the Fund shall be awarded by the Commonwealth Research Commercialization Fund
 103 Approval Committee established pursuant to § 2.2-442, and in accordance with the requirements of the
 104 subfunds pursuant to §§ 2.2-439, 2.2-440, and 2.2-441, and the guidelines adopted by the Review
 105 Committee. Funds from the Fund may also be used to pay any administrative costs related to the Fund,
 106 including salary costs of necessary staff and operating expenses of the Review Committee, the Vetting
 107 Committee, and the Approval Committee.

108 C. No funds shall be awarded from the Fund or any of its subfunds until an agreement is entered
 109 into with the intended recipient.

110 D. In any given fiscal year, any moneys in the Fund shall be allocated to the subfunds as follows:

- 111 1. Sixty percent of the funds to the Commercialization Subfund;
- 112 2. Twenty percent of the funds to the Research Match Subfund; and
- 113 3. Twenty percent of the funds to the Eminent Scholar Subfund.

114 However, upon a majority vote of the Approval Committee, moneys may be allocated based on
 115 different percentages if the Approval Committee determines that available funds are more urgently
 116 needed in a particular subfund.

117 § 2.2-439. Commercialization Subfund.

118 A. The Commercialization Subfund (the Subfund) shall exist as a subfund of the Commonwealth
 119 Research Commercialization Fund, established pursuant to § 2.2-438. The Subfund shall be used to
 120 incentivize the commercialization of a product or service related to a special technology industry.

B. In order to qualify for an award from the Subfund, an applicant shall have operations in the Commonwealth. In order to be considered for an award, the project proposed by the applicant shall:

- 1. Commercialize a product or service in a special technology industry;*
- 2. Have a demonstrable economic development benefit to the Commonwealth;*
- 3. Match from other available funds, including funds from an institution of higher education collaborating on the project, the award from the Subfund on at least a one-to-one basis; and*
- 4. Have a reasonable probability of enhancing the Commonwealth's national and global competitiveness.*

C. Priority shall be given to those application projects that (i) are collaborative between private or nonprofit entities, public or private agencies, or institutions of higher education, (ii) project a short time to commercialization, although transformative projects with a longer projected time to commercialization shall not be discounted, (iii) have active third-party equity holders, (iv) have technology and management in place that is likely to successfully bring the product or service to the marketplace, or (v) have a history of successful projects funded out of the Subfund.

D. Projects shall be reviewed as follows:

1. The Review Committee shall review all applications to ensure that they meet the minimum standards established by this section, and shall vote on each application. Applications receiving at least three votes from the Review Committee shall be forwarded to the Vetting Committee.

2. The Vetting Committee shall review all applications forwarded by the Review Committee, weighing the applications based upon the criteria and procedures set forth in the guidelines. The Vetting Committee shall make recommendations to the Approval Committee concerning which applications it recommends for an award, the amount and form of each award, the timing of the award, conditions precedent for the payment of the award, and any other terms and conditions that it recommends.

3. The Approval Committee shall make awards based upon the recommendations of the Vetting Committee.

E. Authorized uses for the award shall include, but not be limited to, salaries and benefits, reasonable travel costs, consumable supplies, operating expenses, contracted research and development, capital equipment, construction or renovation of public or private facilities, and workforce training. The authorized uses of each award shall be set forth with specificity in the agreement. In no case shall the award be used for the restructuring of debt or repayment of debt to a recipient's board of directors, officers, or investors.

§2.2-440. Research Match Subfund.

A. The Research Match Subfund (the Subfund) shall exist as a subfund of the Commonwealth Research Commercialization Fund, established pursuant to § 2.2-438. The Subfund shall be used to match funding for research in nationally and internationally competitive grant programs.

B. In order to qualify for an award from the Research Match Subfund, an applicant shall:

- 1. Be involved in research in a special technology industry;*
- 2. Collaborate with a research consortium that consists of at least one private sector partner in Virginia and at least one institution of higher education, or with at least two institutions of higher education;*
- 3. Have matching funds, on at least a one-to-one basis, from other available funds provided by the consortium described in subdivision 2; and*
- 4. Demonstrate the economic development benefits of the research for the Commonwealth.*

C. Priority shall be given to those application projects that are interdisciplinary in nature, and demonstrate a commitment to ensure that future commercialization efforts resulting from the research will take place in the Commonwealth.

D. Projects shall be reviewed as follows:

1. The Review Committee shall review all applications to ensure that they meet the minimum standards established by this section, and weigh the applications based on the criteria and procedures set forth in the guidelines. The Review Committee shall make recommendations to the Approval Committee as to which applications should receive an award from the Research Match Subfund, what form the award should take, the time of the award, any conditions precedent for payment of the award, and any other terms and conditions as it sees fit.

2. The Approval Committee shall make awards based upon the recommendation of the Review Committee.

E. Authorized uses for the award shall include, but not be limited to, salaries and benefits, reasonable travel costs, consumable supplies, operating expenses, research and development, and capital equipment, as each of those expenses relates to applied research related to commercialization of a product or service, process refinement, proof of concept, federal licensing approval, scale-up manufacturing, development of a commercialization plan, or marketing. The award may also be used to provide a match necessary to seek a research grant from a sponsor other than the Commonwealth. The

182 authorized uses of each award shall be set forth with specificity in the agreement. In no case shall the
183 award be used for basic research, nor shall it be used for any administrative surcharges or overhead
184 costs charged by an institution of higher education.

185 §2.2-441. Eminent Scholar Subfund.

186 A. The Eminent Scholar Subfund (the Subfund) shall exist as a subfund of the Commonwealth
187 Research Commercialization Fund, established pursuant to § 2.2-438. The Subfund shall be used to
188 acquire or enhance research superiority at public institutions of higher education. For purposes of this
189 section, an applicant shall be a state institution of higher education.

190 B. In order to qualify for an award from the Eminent Scholar Subfund, the applicant shall:

191 1. Demonstrate that the scholar being recruited would create research superiority at the institution;

192 2. Demonstrate that the institution making the application has sufficient technology transfer processes
193 and other research capabilities in place to meet the needs of the scholar being recruited;

194 3. Involve a private sector partner with business operations in the Commonwealth;

195 4. Involve research in a special technology industry; and

196 5. Provide a match, on at least a one-to-one basis, for the award, with 50 percent of the match from
197 the applicant and 50 percent of the match from the private sector partner set forth in subdivision 4.

198 C. Priority shall be given to those applications that attract or enhance existing research superiority
199 by attracting additional researchers and resources from outside the Commonwealth, involve fields of
200 study that have a reasonable probability of enhancing the Commonwealth's national and international
201 competitiveness; involve interdisciplinary fields; have great potential for attracting additional funding
202 from federal or other sources; or attract other funds available to the applicant.

203 D. A state institution of higher education submitting an application pursuant to this section shall not
204 knowingly attempt to attract a scholar employed by or identified for consideration for funding by
205 another state or private institution of higher education in the Commonwealth.

206 E. Projects shall be reviewed as follows:

207 1. The Review Committee shall review all applications to ensure that they meet the minimum
208 standards established by this section, and weigh the applications based on the criteria and procedures
209 set forth in the guidelines. The Review Committee shall make recommendations to the Approval
210 Committee as to which applications should receive an award from the Eminent Scholar Subfund, what
211 form the award should take, the time of the award, any conditions precedent for payment of the award,
212 and any other terms and conditions as it sees fit.

213 3. The Approval Committee shall make awards based upon the recommendation of the Review
214 Committee.

215 F. Awards from the subfund shall be used to enhance research and research capability acquisition,
216 which includes but is not limited to salaries and benefits, reasonable travel costs, costs related to
217 research staff to support the primary researcher, key infrastructure specific to the exempted primary
218 research area, consumable supplies, operating expenses, capital equipment, and construction or
219 renovation of facilities. The authorized uses of each award shall be set forth with specificity in the
220 agreement. In no case shall the award be used for basic research, nor shall it be used for any
221 administrative surcharges or overhead costs charged by an institution of higher education.

222 § 2.2-442. Commonwealth Research Commercialization Fund Approval Committee.

223 A. The Commonwealth Research Commercialization Fund Approval Committee (the Approval
224 Committee) is established to make decisions concerning the review of applications to and the award of
225 grants and loans from the Commonwealth Research Commercialization Fund and its subfunds, and when
226 necessary, to make recommendations to the Secretary of Finance pursuant to subsection C of § 2.2-436.

227 B. The Approval Committee shall consist of seven members as follows: the Secretary of Commerce
228 and Trade, the Secretary of Education, and the Secretary of Technology, who shall serve ex officio with
229 voting privileges; two members of the executive branch to be appointed by the Governor; one member
230 of the House of Delegates who is also a member of the MEI Project Approval Commission established
231 pursuant to § 30-309, to be appointed by the Speaker of the House of Delegates; and one member of the
232 Senate who is also a member of the MEI Project Approval Commission established pursuant to
233 § 30-309, to be appointed by the Senate Committee on Rules. Members shall serve terms coincident with
234 the term of the Governor, except for legislative members who shall serve for terms coincident with their
235 terms of office. Vacancies shall be filled in the same manner as the original appointment. Members may
236 be reappointed for successive terms.

237 C. The Approval Committee shall elect a chairman and a vice-chairman annually from among its
238 membership. A majority of the members of the Approval Committee shall constitute a quorum. The
239 Approval Committee shall meet at such times as may be called by the chairman or a majority of the
240 Committee.

241 D. If not otherwise required by law to provide a financial disclosure statement pursuant to
242 § 2.2-3114, each member of the Approval Committee shall complete and annually file the financial
243 disclosure form required pursuant to § 2.2-3118.

E. The Approval Committee shall not make award from the Research Match Subfund or the Eminent Scholar Subfund to any application that has not been recommended for award by the Review Committee, nor may it make any award from the Commercialization Subfund to any application that has not been recommended for award by the Review Committee and the Vetting Committee.

F. The Approval Committee shall appoint the following seven members to the Vetting Committee pursuant to § 2.2-444: the president or his designee of a state institution of higher education not already represented on the Vetting Committee, a representative from a research institution of higher education not located in the Commonwealth, two representatives from venture capital firms or other capital market participants with experience in financing emerging technology businesses, a representative from an engineering firm with experience in the development of facilities for emerging technology companies, a representative from an independent or federal research facility in the Commonwealth, and a representative from a technology company with significant operations in the Commonwealth. The Governor shall submit his slate of nominees for each of the positions set forth in this subsection for approval and appointment by the Approval Committee. If the Approval Committee fails to approve any of the Governor's recommended members, the Governor shall make additional recommendations to the Approval Committee for the applicable appointment until all members of the Vetting Committee have been filled.

G. The Approval Committee shall develop and publish guidelines concerning the administration of the Commonwealth Research Commercialization Fund and its subfunds. Such guidelines shall be made readily available on the websites maintained by the Secretary of Commerce and Trade, the Secretary of Technology, and the Secretary of Education.

H. No later than January 1 of each year, the Approval Committee shall submit a report to the Governor and the General Assembly that includes the following information:

1. The aggregate number and amount of awards made from the Commonwealth Research Commercialization Fund;

2. The number and amount of awards made from each of the Commercialization Subfund, the Research Match Subfund, and the Eminent Scholar Subfund;

3. The aggregate total amount of private sector investment, federal funding, and contributions from other sources obtained or expected to be obtained in connection with awards from the Fund and its subfunds;

4. The name of each recipient of an award from the Fund or its subfunds, and the amount of the award made or scheduled to be made to each recipient, and a brief description of any terms and conditions of the award to the recipient;

5. The intended outcomes of projects awarded funds from the Fund or its subfunds during the preceding two fiscal years; and

6. The actual outcome of all projects awarded funds from the Fund or its subfunds after July 1, 2011, including the financial impact on the Commonwealth of any liquidity event involving a recipient who received an award from the Fund or its subfunds.

Such report shall not include any information that may be exempt from public disclosure pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

§ 2.2-443. Commonwealth Research Commercialization Fund Review Committee.

A. The Commonwealth Research Commercialization Fund Review Committee (the Review Committee) is established to conduct the initial review of all applications for awards from the Commonwealth Research Commercialization Fund and its subfunds.

B. The Review Committee shall consist of five members as follows: one member of the executive branch to be appointed by the Secretary of Commerce and Trade, one member of the executive branch to be appointed by the Secretary of Technology, one member of the executive branch to be appointed by the Secretary of Education, the President and CEO of the Virginia Economic Development Partnership, and the President of the Center for Innovative Technology. Members shall serve terms coincident with the term of office of the Governor in office when the appointment was made. Vacancies shall be filled in the same manner as the original appointment. Members may be reappointed for successive terms.

C. The Review Committee shall elect a chairman and a vice-chairman annually from among its membership. A majority of the members of the Review Committee shall constitute a quorum. The Review Committee shall meet at such times as may be called by the chairman or a majority of the Committee.

D. If not otherwise required by law to provide a financial disclosure statement pursuant to § 2.2-3114, each member of the Review Committee shall complete and annually file the financial disclosure form required pursuant to § 2.2-3118.

E. An affirmative vote from at least three members of the Review Committee shall be required to forward award applications to the Approval Committee or the Vetting Committee, as appropriate.

§ 2.2-444. Commonwealth Research Commercialization Fund Vetting Committee.

A. The Commonwealth Research Commercialization Fund Vetting Committee (the Vetting Committee)

305 *is established to make recommendations to the Approval Committee concerning the award of grants and*
306 *loans from the Commercialization Subfund of the Commonwealth Research Commercialization Fund. In*
307 *making recommendations, the Vetting Committee shall conduct a peer review and evaluation process*
308 *established by the Vetting Committee in conjunction with the guidelines, and shall pay particular*
309 *attention to the science and technologies, the commercialization opportunities, and the financing plans*
310 *of the applications.*

311 *B. The Vetting Committee shall consist of nine members as follows: the President of the University of*
312 *Virginia or his designee and the President of Virginia Polytechnic Institute and State University or his*
313 *designee, the President or his designee from another state institution of higher education, a*
314 *representative from a research institution of higher education not located in the Commonwealth, two*
315 *representatives from venture capital firms or other capital market participants with experience in*
316 *financing emerging technology businesses, a representative from an engineering firm with experience in*
317 *the development of facilities for emerging technology companies, a representative from an independent*
318 *or federal research facility in the Commonwealth, and a representative from a technology company with*
319 *significant operations in the Commonwealth, to be appointed by the Approval Committee pursuant to*
320 *subsection F of § 2.2-442. Members shall serve terms coincident with the term of the Governor in office*
321 *when the appointments are made. Vacancies shall be filled in the same manner as the original*
322 *appointment. Members may be reappointed for successive terms.*

323 *C. The Vetting Committee shall elect a chairman and a vice-chairman annually from among its*
324 *membership. A majority of the members of the Vetting Committee shall constitute a quorum. The Vetting*
325 *Committee shall meet at such times as may be called by the chairman or a majority of the Committee.*

326 *D. The Vetting Committee may establish advisory panels of persons with relevant knowledge and*
327 *background from industry, state or local government, financial institutions, or academia to assist in the*
328 *peer review activities related to the review of applications for awards from the Commercialization*
329 *Subfund.*

330 *E. If not otherwise required by law to provide a financial disclosure statement pursuant to*
331 *§ 2.2-3114, each member of the Vetting Committee shall complete and annually file the financial*
332 *disclosure form required pursuant to § 2.2-3118.*

333 § 2.2-2101. (Effective until July 1, 2013) Prohibition against service by legislators on boards,
334 commissions, and councils within the executive branch; exceptions.

335 Members of the General Assembly shall be ineligible to serve on boards, commissions, and councils
336 within the executive branch of state government who are responsible for administering programs
337 established by the General Assembly. Such prohibition shall not extend to boards, commissions, and
338 councils engaged solely in policy studies or commemorative activities. If any law directs the
339 appointment of any member of the General Assembly to a board, commission, or council in the
340 executive branch of state government that is responsible for administering programs established by the
341 General Assembly, such portion of such law shall be void, and the Governor shall appoint another
342 person from the Commonwealth at large to fill such a position.

343 The provisions of this section shall not apply to members of the Board for Branch Pilots, who shall
344 be appointed as provided for in § 54.1-901; to members of the Board of Trustees of the Southwest
345 Virginia Higher Education Center, who shall be appointed as provided for in § 23-231.3; to members of
346 the Board of Trustees of the Southern Virginia Higher Education Center, who shall be appointed as
347 provided for in § 23-231.25; to members of the Board of Directors of the New College Institute who
348 shall be appointed as provided for in § 23-231.31; to members of the Virginia Interagency Coordinating
349 Council who shall be appointed as provided for in § 2.2-5204; to members of the Board of Veterans
350 Services, who shall be appointed as provided for in § 2.2-2452; to members appointed to the Board of
351 Trustees of the Roanoke Higher Education Authority pursuant to § 23-231.15; to members of the
352 Commonwealth Competition Commission, who shall be appointed as provided for in § 2.2-2621; to
353 members of the Virginia Geographic Information Network Advisory Board, who shall be appointed as
354 provided for in § 2.2-2423; to members of the Board of Visitors of the Virginia School for the Deaf and
355 the Blind, who shall be appointed as provided for in § 22.1-346.2; to members of the Substance Abuse
356 Services Council, who shall be appointed as provided for in § 2.2-2696; to members of the Criminal
357 Justice Services Board, who shall be appointed as provided in § 9.1-108; to members of the Council on
358 Virginia's Future, who shall be appointed as provided for in § 2.2-2685; to members of the State
359 Executive Council for Comprehensive Services for At-Risk Youth and Families, who shall be appointed
360 as provided in § 2.2-2648; to members of the Virginia Workforce Council, who shall be appointed as
361 provided for in § 2.2-2669; to members of the Volunteer Firefighters' and Rescue Squad Workers'
362 Service Award Fund Board, who shall be appointed as provided for in § 51.1-1201; to members of the
363 Secure Commonwealth Panel, who shall be appointed as provided for in § 2.2-306; to members of the
364 Forensic Science Board, who shall be appointed as provided for in § 9.1-1109; to members of the Open
365 Education Curriculum Board, who shall be appointed as provided in § 2.2-2463; to members of the
366 Commonwealth Research Commercialization Fund Approval Committee, who shall be appointed as

provided in § 2.2-442; or to members of the Southwest Virginia Cultural Heritage Commission, who shall be appointed as provided in § 2.2-2533.

§ 2.2-2101. (Effective July 1, 2013) Prohibition against service by legislators on boards, commissions, and councils within the executive branch; exceptions.

Members of the General Assembly shall be ineligible to serve on boards, commissions, and councils within the executive branch of state government who are responsible for administering programs established by the General Assembly. Such prohibition shall not extend to boards, commissions, and councils engaged solely in policy studies or commemorative activities. If any law directs the appointment of any member of the General Assembly to a board, commission, or council in the executive branch of state government that is responsible for administering programs established by the General Assembly, such portion of such law shall be void, and the Governor shall appoint another person from the Commonwealth at large to fill such a position.

The provisions of this section shall not apply to members of the Board for Branch Pilots, who shall be appointed as provided for in § 54.1-901; to members of the Board of Trustees of the Southwest Virginia Higher Education Center, who shall be appointed as provided for in § 23-231.3; to members of the Board of Trustees of the Southern Virginia Higher Education Center, who shall be appointed as provided for in § 23-231.25; to members of the Board of Directors of the New College Institute who shall be appointed as provided for in § 23-231.31; to members of the Virginia Interagency Coordinating Council who shall be appointed as provided for in § 2.2-5204; to members of the Board of Veterans Services, who shall be appointed as provided for in § 2.2-2452; to members appointed to the Board of Trustees of the Roanoke Higher Education Authority pursuant to § 23-231.15; to members of the Commonwealth Competition Commission, who shall be appointed as provided for in § 2.2-2621; to members of the Virginia Geographic Information Network Advisory Board, who shall be appointed as provided for in § 2.2-2423; to members of the Board of Visitors of the Virginia School for the Deaf and the Blind, who shall be appointed as provided for in § 22.1-346.2; to members of the Substance Abuse Services Council, who shall be appointed as provided for in § 2.2-2696; to members of the Criminal Justice Services Board, who shall be appointed as provided in § 9.1-108; to members of the State Executive Council for Comprehensive Services for At-Risk Youth and Families, who shall be appointed as provided in § 2.2-2648; to members of the Virginia Workforce Council, who shall be appointed as provided for in § 2.2-2669; to members of the Volunteer Firefighters' and Rescue Squad Workers' Service Award Fund Board, who shall be appointed as provided for in § 51.1-1201; to members of the Secure Commonwealth Panel, who shall be appointed as provided for in § 2.2-306; to members of the Forensic Science Board, who shall be appointed as provided for in § 9.1-1109; to members of the Open Education Curriculum Board, who shall be appointed as provided in § 2.2-2463; to members of the Commonwealth Research Commercialization Fund Approval Committee, who shall be appointed as provided in § 2.2-442; or to members of the Southwest Virginia Cultural Heritage Commission, who shall be appointed as provided in § 2.2-2533.

§ 2.2-2221. Powers of the Authority.

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

1. Sue and be sued, implead and be impleaded, complain and defend in all courts.
2. Adopt, use, and alter at will a corporate seal.
3. Acquire, purchase, hold, use, lease or otherwise dispose of any project and property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of the Authority, and, without limitation of the foregoing, to lease as lessee, any project and any property, real, personal or mixed, or any interest therein, at such annual rental and on such terms and conditions as may be determined by the Board and to lease as lessor to any person, any project and any property, real, personal or mixed, tangible or intangible, or any interest therein, at any time acquired by the Authority, whether wholly or partially completed, at such annual rental and on such terms and conditions as may be determined by the Board, and to sell, transfer or convey any property, real, personal or mixed, tangible or intangible or any interest therein, at any time acquired or held by the Authority on such terms and conditions as may be determined by the board of the Authority.
4. Plan, develop, undertake, carry out, construct, improve, rehabilitate, repair, furnish, maintain, and operate projects.

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

6. Establish and maintain satellite offices within the Commonwealth.

7. Fix, alter, charge, and collect rates, rentals, and other charges for the use of projects of, or for the sale of products of or for the services rendered by, the Authority, at rates to be determined by it for the purpose of providing for the payment of the expenses of the Authority, the planning, development, construction, improvement, rehabilitation, repair, furnishing, maintenance, and operation of its projects and properties, the payment of the costs accomplishing its purposes set forth in § 2.2-2219, the payment

428 of the principal of and interest on its obligations, and to fulfill the terms and provisions of any
429 agreements made with the purchasers or holders of any such obligations.

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

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

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

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

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

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

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

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

474 16. Develop a comprehensive research and development strategic roadmap for the Commonwealth to
475 identify research areas worthy of institutional focus. Such a roadmap shall incorporate the strategic plan
476 for each research university in the Commonwealth, identify common themes, and make
477 recommendations for alignment of research and development and economic growth in the
478 Commonwealth. In developing the strategic roadmap, the Authority shall solicit feedback from both
479 public and private institutions of higher education in the Commonwealth, as well as the private sector.
480 The Authority shall review and update the roadmap at least once every three years. The Authority shall
481 submit the roadmap, and any subsequent updates, to the Governor and the chairmen of the Senate
482 Finance Committee, the House Appropriations Committee, the Senate Committee on General Laws and
483 Technology, the House Committee on Science and Technology, and the Joint Commission on
484 Technology and Science.

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

488 18. Receive and review annual reports from state institutions of higher education regarding the
489 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 report~~. 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 award of funds from the Commonwealth Research and Commercialization Fund pursuant to § 2.2-2233.1.~~

~~20.19.~~ Do all acts and things necessary or convenient to carry out the powers granted to it by law.

§ 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-132.4 or 62.1-134.1.

2. Financial statements not publicly available filed with applications for industrial development financings in accordance with Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2.

3. Confidential proprietary records, voluntarily provided by private business pursuant to a promise of confidentiality from a public body, used by the public body for business, trade and tourism development or retention; and memoranda, working papers or other records related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where, if such records are made public, the financial interest of the public body would be adversely affected.

4. Information that was filed as confidential under the Toxic Substances Information Act (§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992.

5. Fisheries data that would permit identification of any person or vessel, except when required by court order as specified in § 28.2-204.

6. Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections provided to the Department of Rail and Public Transportation, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration.

7. Confidential proprietary records related to inventory and sales, voluntarily provided by private energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy contingency planning purposes or for developing consolidated statistical information on energy supplies.

8. Confidential proprietary information furnished to the Board of Medical Assistance Services or the Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.

9. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and cost projections provided by a private transportation business to the Virginia Department of Transportation and the Department of Rail and Public Transportation for the purpose of conducting transportation studies needed to obtain grants or other financial assistance under the Transportation Equity Act for the 21st Century (P.L. 105-178) for transportation projects, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration. However, the exemption provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.

10. Confidential information designated as provided in subsection F of § 2.2-4342 as trade secrets or proprietary information by any person who has submitted to a public body an application for prequalification to bid on public construction projects in accordance with subsection B of § 2.2-4317.

11. a. Memoranda, staff evaluations, or other records prepared by the responsible public entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed under the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) or the Public Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.), where (i) if such records were made public prior to or after the execution of an interim or a comprehensive agreement, § 56-573.1:1 or 56-575.17 notwithstanding, the financial interest or bargaining position of the public entity would be adversely affected, and (ii) the basis for the determination required in clause (i) is documented in writing by the responsible public entity; and

b. Records provided by a private entity to a responsible public entity, affected jurisdiction, or affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995 or

the Public-Private Education Facilities and Infrastructure Act of 2002, to the extent that such records contain (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (ii) financial records of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (iii) other information submitted by the private entity, where, if the records were made public prior to the execution of an interim agreement or a comprehensive agreement, the financial interest or bargaining position of the public or private entity would be adversely affected. In order for the records specified in clauses (i), (ii) and (iii) to be excluded from the provisions of this chapter, the private entity shall make a written request to the responsible public entity:

1. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;

2. Identifying with specificity the data or other materials for which protection is sought; and

3. Stating the reasons why protection is necessary.

The responsible public entity shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial records of the private entity. To protect other records submitted by the private entity from disclosure, the responsible public entity shall determine whether public disclosure prior to the execution of an interim agreement or a comprehensive agreement would adversely affect the financial interest or bargaining position of the public or private entity. The responsible public entity shall make a written determination of the nature and scope of the protection to be afforded by the responsible public entity under this subdivision. Once a written determination is made by the responsible public entity, the records afforded protection under this subdivision shall continue to be protected from disclosure when in the possession of any affected jurisdiction or affected local jurisdiction.

Except as specifically provided in subdivision 11 a, nothing in this subdivision shall be construed to authorize the withholding of (a) procurement records as required by § 56-573.1:1 or 56-575.17; (b) information concerning the terms and conditions of any interim or comprehensive agreement, service contract, lease, partnership, or any agreement of any kind entered into by the responsible public entity and the private entity; (c) information concerning the terms and conditions of any financing arrangement that involves the use of any public funds; or (d) information concerning the performance of any private entity developing or operating a qualifying transportation facility or a qualifying project.

For the purposes of this subdivision, the terms "affected jurisdiction," "affected local jurisdiction," "comprehensive agreement," "interim agreement," "qualifying project," "qualifying transportation facility," "responsible public entity," and "private entity" shall mean the same as those terms are defined in the Public-Private Transportation Act of 1995 or in the Public-Private Education Facilities and Infrastructure Act of 2002.

12. Confidential proprietary information or trade secrets, not publicly available, provided by a private person or entity to the Virginia Resources Authority or to a fund administered in connection with financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such information were made public, the financial interest of the private person or entity would be adversely affected, and, after June 30, 1997, where such information was provided pursuant to a promise of confidentiality.

13. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), or confidential proprietary records that are not generally available to the public through regulatory disclosure or otherwise, provided by a (a) bidder or applicant for a franchise or (b) franchisee under Chapter 21 (§ 15.2-2100 et seq.) of Title 15.2 to the applicable franchising authority pursuant to a promise of confidentiality from the franchising authority, to the extent the records relate to the bidder's, applicant's, or franchisee's financial capacity or provision of new services, adoption of new technologies or implementation of improvements, where such new services, technologies or improvements have not been implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such records were made public, the competitive advantage or financial interests of the franchisee would be adversely affected.

In order for trade secrets or confidential proprietary information to be excluded from the provisions of this chapter, the bidder, applicant, or franchisee shall (i) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the reason why protection is necessary.

No bidder, applicant, or franchisee may invoke the exclusion provided by this subdivision if the bidder, applicant, or franchisee is owned or controlled by a public body or if any representative of the applicable franchising authority serves on the management board or as an officer of the bidder, applicant, or franchisee.

14. Documents and other information of a proprietary nature furnished by a supplier of charitable gaming supplies to the Department of Agriculture and Consumer Services pursuant to subsection E of § 18.2-340.34.

15. Records and reports related to Virginia apple producer sales provided to the Virginia State Apple Board pursuant to § 3.2-1215.

16. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) of Title 59.1, submitted by CMRS providers as defined in § 56-484.12 to the Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to § 56-484.15, relating to the provision of wireless E-911 service.

17. Records submitted as a grant or loan application, or accompanying a grant or loan application, to the Commonwealth Research Commercialization Fund Approval Committee, Review Committee, or Vetting Committee pursuant to Chapter 4.3 (§ 2.2-436 et seq.), the Innovation and Entrepreneurship Investment Authority pursuant to Article 3 (§ 2.2-2233.1 et seq.) of Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to Chapter 22 (§ 23-277 et seq.) of Title 23 to the extent such records contain proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, if the disclosure of such information would be harmful to the competitive position of the applicant.

18. Confidential proprietary records and trade secrets developed and held by a local public body (i) providing telecommunication services pursuant to § 56-265.4:4 and (ii) providing cable television services pursuant to Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 21 of Title 15.2, to the extent that disclosure of such records would be harmful to the competitive position of the locality. In order for confidential proprietary information or trade secrets to be excluded from the provisions of this chapter, the locality in writing shall (i) invoke the protections of this subdivision, (ii) identify with specificity the records or portions thereof for which protection is sought, and (iii) state the reasons why protection is necessary.

19. Confidential proprietary records and trade secrets developed by or for a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) to provide qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of Title 56, where disclosure of such information would be harmful to the competitive position of the authority, except that records required to be maintained in accordance with § 15.2-2160 shall be released.

20. Trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or financial records of a business, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, provided to the Department of Minority Business Enterprise as part of an application for (i) certification as a small, women-owned, or minority-owned business in accordance with Chapter 14 (§ 2.2-1400 et seq.) of this title or (ii) a claim made by a disadvantaged business or an economically disadvantaged individual against the Capital Access Fund for Disadvantaged Businesses created pursuant to § 2.2-2311. In order for such trade secrets or financial records to be excluded from the provisions of this chapter, the business shall (a) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (b) identify the data or other materials for which protection is sought, and (c) state the reasons why protection is necessary.

21. Documents and other information of a proprietary or confidential nature disclosed by a carrier to the State Health Commissioner pursuant to § 32.1-276.5:1.

22. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), including, but not limited to, financial records, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, and revenue and cost projections supplied by a private or nongovernmental entity to the Inspector General of the Virginia Department of Transportation for the purpose of an audit, special investigation, or any study requested by the Inspector General's Office in accordance with law.

In order for the records specified in this subdivision to be excluded from the provisions of this chapter, the private or nongovernmental entity shall make a written request to the Department:

1. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;

2. Identifying with specificity the data or other materials for which protection is sought; and

3. Stating the reasons why protection is necessary.

The Inspector General of the Virginia Department of Transportation shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial records of the private entity. The Virginia Department of Transportation shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.

23. Records submitted as a grant application, or accompanying a grant application, to the Virginia Tobacco Indemnification and Community Revitalization Commission to the extent such records contain (i) trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), (ii) financial records

of a grant applicant that is not a public body, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, or (iii) research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, if the disclosure of such information would be harmful to the competitive position of the applicant; and memoranda, staff evaluations, or other records prepared by the Commission or its staff exclusively for the evaluation of grant applications. The exclusion provided by this subdivision shall apply to grants that are consistent with the powers of and in furtherance of the performance of the duties of the Commission pursuant to § 3.2-3103.

In order for the records specified in this subdivision to be excluded from the provisions of this chapter, the applicant shall make a written request to the Commission:

1. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;

2. Identifying with specificity the data, records or other materials for which protection is sought; and

3. Stating the reasons why protection is necessary.

The Commission shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets, financial records or research-related information of the applicant. The Commission shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.

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

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

1. Discussion, consideration, or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public 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 activity and estimating general and nongeneral fund revenues.

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

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

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

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

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

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

21. Those portions of meetings in which individual child death cases are discussed by the State Child Fatality Review team established pursuant to § 32.1-283.1, and those portions of meetings in which

individual child death cases are discussed by a regional or local child fatality review team established pursuant to § 32.1-283.2, and those portions of meetings in which individual death cases are discussed by family violence fatality review teams established pursuant to § 32.1-283.3.

22. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any persons to whom management responsibilities for the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, have been delegated, in which there is discussed 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 adversely affect the competitive position of the Medical Center or Eastern Virginia Medical School, as the case may be.

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

24. Those portions of the meetings of the Health Practitioners' Monitoring Program Committee within 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 appointed to advise the Innovation and Entrepreneurship Investment Authority on the grant applications, *or (iii) the Commonwealth Research Commercialization Fund Approval Committee, Review Committee, or Vetting Committee, or an advisory panel created to advise the Vetting Committee on a grant application.*

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.

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

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

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

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

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

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

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

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

2. That for purposes of determining whether property was developed "wholly or predominantly" through the use of state general funds pursuant to § 23-4.4 of the Code of Virginia, awards made pursuant to the provisions of this act shall not be considered state general funds.

3. That §§ 2.2-2233.1 and 2.2-2233.2 of the Code of Virginia are repealed.