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SENATE BILL NO. 1385

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology
on February 9, 2015)

(Patron Prior to Substitute—Senator Vogel)

A BILL to amend and reenact §§ 2.2-2220, 2.2-2221, and 2.2-2221.1 of the Code of Virginia, relating to the Innovation and Entrepreneurship Investment Authority; quorum; powers and duties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-2220, 2.2-2221, and 2.2-2221.1 of the Code of Virginia are amended and reenacted as follows:

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

The Authority shall be governed by a board of directors consisting of ~~45~~ 17 members appointed as follows: (i) two presidents of the major research state institutions of higher education, and one president representing the other state institutions of higher education, appointed by the Governor; (ii) three nonlegislative citizen members appointed by the Governor; (iii) ~~six~~ eight nonlegislative citizen members appointed by the General Assembly as follows: ~~three~~ four nonlegislative citizen members appointed by the Speaker of the House from a list recommended by the House Committee on Science and Technology and the Joint Commission on Technology and Science; ~~three~~ and four nonlegislative citizen members appointed by the Senate Committee on Rules from a list recommended by the Senate Committee on General Laws and Technology and the Joint Commission on Technology and Science; and (iv) the Secretary of Technology, the Secretary of Commerce and Trade, and the Secretary of Education, who shall serve ex officio with full voting privileges.

One nonlegislative citizen member appointed by the Governor, one nonlegislative citizen member appointed by the Speaker of the House, and one nonlegislative citizen member appointed by the Senate Committee on Rules shall each have experience as a founding member of a technology company based upon intellectual property that has ~~successfully~~ secured a ~~minimum~~ of \$5 million of institutional venture private investment capital. One nonlegislative citizen member appointed by the Governor, one nonlegislative citizen member appointed by the Speaker of the House, and one nonlegislative citizen member appointed by the Senate Committee on Rules shall each have experience as an institutional venture capital investment partner in a fund with a ~~minimum~~ of \$250 million of limited partner investment and a ~~minimum~~ of five years of fund operations. One nonlegislative citizen member appointed by the Governor, one nonlegislative citizen member appointed by the Speaker of the House, and one nonlegislative citizen member appointed by the Senate Committee on Rules shall each have experience as a senior executive in a technology or scientific research and development company with annual revenues in excess of ~~\$50~~ \$5 million. ~~One nonlegislative citizen member appointed by the Speaker of the House and one nonlegislative citizen member appointed by the Senate Committee on Rules shall be from rural areas of the Commonwealth.~~

The Secretary of Technology, Secretary of Commerce and Trade, and Secretary of Education shall serve terms coincident with their terms of office. After the initial staggering of terms, nonlegislative citizen members and presidents shall be appointed for terms of two years. Vacancies in the membership of the Board shall be filled in the same manner as the original appointments for the unexpired portion of the term. No nonlegislative citizen member or president shall be eligible to serve for more than three successive two-year terms; however, after the expiration of a term of one year, or after the expiration of the remainder of a term to which appointed to fill a vacancy, three additional terms may be served by such member if appointed thereto. Members of the Board shall be subject to removal from office in like manner as are state, county, town and district officers under the provisions of §§ 24.2-230 through 24.2-238. Immediately after appointment, the members of the Board shall enter upon the performance of their duties.

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

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

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

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

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

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

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

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

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

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

15. Receive, administer, and market any interest in patents, copyrights and materials that were

potentially patentable or copyrightable developed by or for state agencies, public institutions of higher education and political subdivisions of the Commonwealth. The Authority shall return to the agency, institution or political subdivision any revenue in excess of its administrative and marketing costs. When general funds are used to develop the patent or copyright or material that was potentially patentable or copyrightable, any state agency, except a public institution of higher education in Virginia, shall return any revenues it receives from the Authority to the general fund unless the Governor authorizes a percentage of the net royalties to be shared with the developer of the patented, copyrighted, or potentially patentable or copyrightable property.

16. Develop the Commonwealth Research and Technology Strategic Roadmap, pursuant to § 2.2-2221.2 for the Commonwealth to use to identify research areas worthy of institutional focus and Commonwealth investment in order to promote commercialization and economic development efforts in the Commonwealth.

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

18. Receive and review annual reports from state institutions of higher education regarding the 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. 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~~ *In consultation with the Secretary of Technology, develop* guidelines for the application, review, and award of funds from the Commonwealth Research Commercialization Fund pursuant to § 2.2-2233.1. These guidelines shall address, at a minimum, the application process and shall give special emphasis to fostering collaboration between institutions of higher education and partnerships between institutions of higher education and business and industry.

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

21. *Exclusively, or with any other person, form and otherwise develop, own, operate, govern, and otherwise direct the disposition of assets of, or any combination thereof, separate legal entities, on any such terms and conditions and in any such manner as may be determined by the Board, provided that such separate legal entities shall be formed solely for the purpose of managing and administering any assets disposed of by the Authority. These legal entities may include limited liability companies, limited partnerships, charitable foundations, real estate holding companies, investment holding companies, nonstock corporations, and benefit corporations. Any entities created by the Authority shall be operated under the governance of the Authority. The Board shall be provided with quarterly performance reports for all governed entities. The articles of incorporation, partnership, or organization for these entities shall provide that, upon dissolution, the assets of the entities that are owned on behalf of the Commonwealth shall be transferred to the Authority. The legal entity shall ensure that the economic benefits attributable to the income and property rights arising from any transactions in which the entity is involved are allocated on a basis that is equitable in the reasonable business judgment of the Board, with due account being given to the interest of the citizens of the Commonwealth and the needs of the formed entity. No legal entity shall be deemed to be a state or governmental agency, advisory agency, or public body or instrumentality. No director, officer, or employee of any such entity shall be deemed to be an officer or employee for purposes of the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.). Notwithstanding the foregoing, the Auditor of Public Accounts or his legally authorized representatives shall annually audit the financial accounts of the Authority and any such entity, provided that the working papers and records of the Auditor of Public Accounts relating to such audits shall not be subject to the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).*

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

§ 2.2-2221.1. Reporting and transparency requirement for the Center for Innovative Technology.

A. The president of the Center for Innovative Technology shall report annually to the Joint Commission on Technology and Science, created pursuant to § 30-85, regarding a review of the Center's initiatives and projects, its work plan for the year and the expected results therefrom, and an overview of the results that it has achieved to date, to assist the Commission in its effort to stimulate, encourage, and promote the development of technology and science in the Commonwealth and sound public policies related thereto.

183 B. No later than July 15 of each year, the Innovation and Entrepreneurship Investment Authority
184 shall provide to the Chairmen of the House Appropriations and Senate Finance Committees, the
185 Secretary of Technology, and the Director of the Department of Planning and Budget a report of its
186 operating plan for each year of the biennium. Within three months after the end of the fiscal year, the
187 Center shall submit to the same persons a detailed expenditure report for the concluded fiscal year.
188 Both reports shall be prepared in the format as approved by the Director of the Department of Planning
189 and Budget and include, but not be limited to, the following:

190 1. All planned and actual revenue and expenditures along with funding sources, including state,
191 federal, and other revenue sources, of both the Innovation and Entrepreneurship Investment Authority
192 and the Center for Innovative Technology;

193 2. A listing of the salaries, bonuses, and benefits of all employees of the Innovation and
194 Entrepreneurship Investment Authority and the Center for Innovative Technology;

195 3. By program, total grants made and investments awarded for each grant and investment program,
196 to include the Commonwealth Research Commercialization Fund;

197 4. By program, the projected economic impact on the Commonwealth and recoveries of previous
198 grants or investments and sales of equity positions; and

199 5. Cash balances by funding source, and report, by program, available, committed, and projected
200 expenditures of all cash balances.

201 C. The president of the Center for Innovative Technology shall report quarterly to the Center's board
202 of directors, the Chairmen of the House Appropriations and Senate Finance Committees, the Secretary
203 of Technology, and the Director of the Department of Planning and Budget in a format approved by the
204 Board the following:

205 1. The quarterly financial performance, determined by comparing the budgeted and actual revenues
206 and expenditures with planned revenues and expenditures for the fiscal year;

207 2. All investments and grants executed compared with projected investment closings and the return
208 on prior investments and grants including all gains and losses; and

209 3. The financial and programmatic performance of all operating entities owned by the Center.

210 D. The president of the Center for Innovative Technology shall provide an annual report describing
211 key programs and their economic performance for the Commonwealth in a format understandable by the
212 citizens of the Commonwealth and available on the Center's website.

213 2. That the provisions of this act authorize any nonstock corporation (i) specifically authorized by
214 the Governor pursuant to § 2.2-2232 of the Code of Virginia and (ii) currently managing the
215 cybersecurity accelerator known as MACH37 and the investment funds known as the CIT GAP
216 Funds to establish such cybersecurity accelerator and investment funds as separate legal entities
217 that are not under the control of the nonstock corporation. The separate legal entities shall be
218 authorized to raise such funds as may be necessary for the purposes for which they are
219 established.