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SENATE BILL NO. 487**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the Senate Committee on Finance and Appropriations
on January 31, 2024)

(Patrons Prior to Substitute—Senators Aird and Pillion [SB 621])

A BILL to amend and reenact § 2.2-2007 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 55.3 of Title 2.2 a section numbered 2.2-5514.2 and by adding in Title 30 a chapter numbered 67, consisting of sections numbered 30-430 through 30-436, relating to artificial intelligence by public bodies; prohibitions; Commission on Artificial Intelligence established; report; sunset.

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-2007 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 55.3 of Title 2.2 a section numbered 2.2-5514.2 and by adding in Title 30 a chapter numbered 67, consisting of sections numbered 30-430 through 30-436, as follows:

§ 2.2-2007. Powers of the CIO.

A. The CIO shall promulgate regulations necessary or incidental to the performance of duties or execution of powers conferred under this chapter. The CIO shall also develop policies, standards, and guidelines for the planning, budgeting, procurement, development, maintenance, security, and operations of information technology for executive branch agencies. Such policies, standards, and guidelines shall include those necessary to:

1. Support state and local government exchange, acquisition, storage, use, sharing, and distribution of data and related technologies.

2. Support the development of electronic transactions including the use of electronic signatures as provided in § 59.1-496.

3. Support a unified approach to information technology across the totality of state government, thereby assuring that the citizens and businesses of the Commonwealth receive the greatest possible security, value, and convenience from investments made in technology.

4. Ensure that the costs of information technology systems, products, data, and services are contained through the shared use of existing or planned equipment, data, or services.

5. Provide for the effective management of information technology investments through their entire life cycles, including identification, business case development, selection, procurement, implementation, operation, performance evaluation, and enhancement or retirement. Such policies, standards, and guidelines shall include, at a minimum, the periodic review by the CIO of agency Commonwealth information technology projects.

6. Establish an Information Technology Investment Management Standard based on acceptable technology investment methods to ensure that all executive branch agency technology expenditures are an integral part of the Commonwealth's performance management system, produce value for the agency and the Commonwealth, and are aligned with (i) agency strategic plans, (ii) the Governor's policy objectives, and (iii) the long-term objectives of the Council on Virginia's Future.

B. In addition to other such duties as the Secretary may assign, the CIO shall:

1. Oversee and administer the Virginia Technology Infrastructure Fund created pursuant to § 2.2-2023.

2. Report annually to the Governor, the Secretary, and the Joint Commission on Technology and Science created pursuant to § 30-85 on the use and application of information technology by executive branch agencies to increase economic efficiency, citizen convenience, and public access to state government.

3. Prepare annually a report for submission to the Secretary, the Information Technology Advisory Council, and the Joint Commission on Technology and Science on a prioritized list of Recommended Technology Investment Projects (RTIP Report) based upon major information technology projects submitted for business case approval pursuant to this chapter. As part of the RTIP Report, the CIO shall develop and regularly update a methodology for prioritizing projects based upon the allocation of points to defined criteria. The criteria and their definitions shall be presented in the RTIP Report. For each project recommended for funding in the RTIP Report, the CIO shall indicate the number of points and how they were awarded. For each listed project, the CIO shall also report (i) all projected costs of ongoing operations and maintenance activities of the project for the next three biennia following project implementation; (ii) a justification and description for each project baseline change; and (iii) whether the project fails to incorporate existing standards for the maintenance, exchange, and security of data. This report shall also include trends in current projected information technology spending by executive branch

60 agencies and secretariats, including spending on projects, operations and maintenance, and payments to
61 VITA. Agencies shall provide all project and cost information required to complete the RTIP Report to
62 the CIO prior to May 31 immediately preceding any budget biennium in which the project appears in
63 the Governor's budget bill.

64 4. Provide oversight for executive branch agency efforts to modernize the planning, development,
65 implementation, improvement, operations and maintenance, and retirement of Commonwealth
66 information technology, including oversight for the selection, development and management of enterprise
67 information technology.

68 5. Develop statewide technical and data standards and specifications for information technology and
69 related systems, including (i) the efficient exchange of electronic information and technology, including
70 infrastructure, between the public and private sectors in the Commonwealth and (ii) the utilization of
71 nationally recognized technical and data standards for health information technology systems or software
72 purchased by an executive branch agency.

73 6. Direct the compilation and maintenance of an inventory of information technology, including but
74 not limited to personnel, facilities, equipment, goods, and contracts for services.

75 7. Provide for the centralized marketing, provision, leasing, and executing of licensing agreements for
76 electronic access to public information and government services through the Internet, wireless devices,
77 personal digital assistants, kiosks, or other such related media on terms and conditions as may be
78 determined to be in the best interest of the Commonwealth. VITA may fix and collect fees and charges
79 for (i) public information, media, and other incidental services furnished by it to any private individual
80 or entity, notwithstanding the charges set forth in § 2.2-3704, and (ii) such use and services it provides
81 to any executive branch agency or local government. Nothing in this subdivision authorizing VITA to
82 fix and collect fees for providing information services shall be construed to prevent access to the public
83 records of any public body pursuant to the provisions of the Virginia Freedom of Information Act
84 (§ 2.2-3700 et seq.). VITA is authorized, subject to the approval by the Secretary of Administration and
85 any other affected Secretariat, to delegate the powers and responsibilities granted in this subdivision to
86 any agency within the executive branch.

87 8. Periodically evaluate the feasibility of outsourcing information technology resources and services,
88 and outsource those resources and services that are feasible and beneficial to the Commonwealth.

89 9. Have the authority to enter into and amend contracts, including contracts with one or more other
90 public bodies, or public agencies or institutions or localities of the several states, of the United States or
91 its territories, or the District of Columbia, for the provision of information technology services.

92 10. *Develop, publish, and maintain policies and procedures concerning the development,*
93 *procurement, implementation, utilization, and ongoing assessment of systems that employ artificial*
94 *intelligence and are in use by public bodies. Such policies and procedures shall, at a minimum, include*
95 *policies and procedures that (i) govern the procurement, implementation, and ongoing assessment of any*
96 *such system by a public body; (ii) are sufficient to ensure that no such system (a) results in any*
97 *unlawful discrimination against any individual or group of individuals or (b) has any unlawful disparate*
98 *impact on any individual or group of individuals on the basis of any actual or perceived differentiating*
99 *characteristic, including age, genetic information, color, ethnicity, race, creed, religion, national origin,*
100 *ancestry, sex, gender identity or expression, sexual orientation, marital status, familial status, pregnancy,*
101 *veteran status, disability, or lawful source of income; and (iii) require a public body to assess the likely*
102 *impact of any such system before implementing such system and perform ongoing assessments of such*
103 *system to ensure that no such system results in any such unlawful discrimination or disparate impact.*

104 C. Consistent with § 2.2-2012, the CIO may enter into public-private partnership contracts to finance
105 or implement information technology programs and projects. The CIO may issue a request for
106 information to seek out potential private partners interested in providing programs or projects pursuant to
107 an agreement under this subsection. The compensation for such services shall be computed with
108 reference to and paid from the increased revenue or cost savings attributable to the successful
109 implementation of the program or project for the period specified in the contract. The CIO shall be
110 responsible for reviewing and approving the programs and projects and the terms of contracts for same
111 under this subsection. The CIO shall determine annually the total amount of increased revenue or cost
112 savings attributable to the successful implementation of a program or project under this subsection and
113 such amount shall be deposited in the Virginia Technology Infrastructure Fund created in § 2.2-2023.
114 The CIO is authorized to use moneys deposited in the Fund to pay private partners pursuant to the terms
115 of contracts under this subsection. All moneys in excess of that required to be paid to private partners,
116 as determined by the CIO, shall be reported to the Comptroller and retained in the Fund. The CIO shall
117 prepare an annual report to the Governor, the Secretary, and General Assembly on all contracts under
118 this subsection, describing each information technology program or project, its progress, revenue impact,
119 and such other information as may be relevant.

120 D. Executive branch agencies shall cooperate with VITA in identifying the development and
121 operational requirements of proposed information technology systems, products, data, and services,

including the proposed use, functionality, and capacity, and the total cost of acquisition, operation, and maintenance.

§ 2.2-5514.2. Prohibited artificial intelligence.

A. For purposes of this section:

"Artificial intelligence" means the simulation of human intelligence processes by a machine, especially computer systems, such that it can adapt and learn on its own using machine algorithms that can analyze large volumes of training data to identify correlations, patterns, and other metadata that can be used to develop a model that can make predictions or recommendations based on future data inputs.

"Public body" means the same as that term is defined in § 2.2-5514.

B. A public body shall not implement any system that employs artificial intelligence unless it has fulfilled the requirements of this section and complied with the artificial intelligence policies and procedures developed by the Chief Information Officer of the Commonwealth pursuant to subdivision B 10 of § 2.2-2007.

C. Prior to implementing any system that employs artificial intelligence, the public body shall performed an impact assessment, in accordance with the policies and procedures established pursuant to subdivision B 10 of § 2.2-2007, to ensure that such system will not result in any unlawful discrimination against any individual or group of individuals or have any disparate impact on any individual or group of individuals. A public body shall additionally perform ongoing assessments of such system after implementation. If the public body, or the head of the public body, determines, in its discretion, that such system will result in any unlawful discrimination or disparate impact, the public body shall not implement such system or cease to use such system to the extent required to deter such effects.

D. All public bodies that implement such systems shall annually report on initial and ongoing system assessments and provide an inventory of such systems used. Such report and inventory shall be transmitted to the appropriate entity annually. Public bodies in the legislative branch shall submit such report and inventory to the General Assembly. Public bodies in the judicial branch shall submit such report and inventory to the Executive Secretary of the Supreme Court of Virginia. Public bodies in the executive branch and any other public bodies not specified in this subsection shall submit such report and inventory to the Chief Information Officer of the Commonwealth.

CHAPTER 67.

COMMISSION ON ARTIFICIAL INTELLIGENCE.

§ 30-430. Commission on Artificial Intelligence; purpose.

The Commission on Artificial Intelligence (the Commission) is established in the legislative branch of state government. The purpose of the Commission is to advise the General Assembly on issues related to artificial intelligence and make advisory recommendations based on its findings.

§ 30-431. Membership; terms; vacancies; chairman and vice-chairman.

The Commission shall have a total membership of 13 members that shall consist of eight legislative members, four nonlegislative citizen members, and one ex officio member. Members shall be appointed as follows: four members of the Senate, to be appointed by the Senate Committee on Rules; four members of the House of Delegates, to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; two nonlegislative citizen members to be appointed by the Senate Committee on Rules; and two nonlegislative citizen members to be appointed by the Speaker of the House of Delegates. Such nonlegislative citizen members shall have a background or expertise in artificial intelligence, information technology, or digital ethics. The Chief Information Officer of the Commonwealth or his designee shall serve ex officio with nonvoting privileges. Nonlegislative citizen members of the Commission shall be citizens of the Commonwealth. Unless otherwise approved in writing by the chairman of the Commission and the respective Clerk, nonlegislative citizen members shall only be reimbursed for travel originating and ending within the Commonwealth for the purpose of attending meetings.

Legislative members and the ex officio member of the Commission shall serve terms coincident with their terms of office. Nonlegislative citizen members shall be appointed for a term of two years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Legislative members and nonlegislative citizen members may be reappointed.

No Senate member shall serve more than two consecutive four-year terms, no House member shall serve more than four consecutive two-year terms, and no nonlegislative citizen member appointed by the Speaker of the House of Delegates or the Senate Committee on Rules shall serve more than four consecutive two-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment. Vacancies shall be filled in the same manner as the original appointments.

The Commission shall elect a chairman and vice-chairman from among its membership, who shall be members of the General Assembly.

§ 30-432. Quorum; meetings; voting on recommendations.

A majority of the members shall constitute a quorum. The Commission shall meet no more than three times each year. The meetings of the Commission shall be held at the call of the chairman or whenever the majority of the members so request.

No recommendation of the Commission shall be adopted if a majority of the Senate members or a majority of the House members appointed to the Commission (i) vote against the recommendation and (ii) vote for the recommendation to fail notwithstanding the majority vote of the Commission.

§ 30-433. Compensation; expenses.

Legislative members of the Commission shall receive such compensation as provided in § 30-19.12, and nonlegislative citizen members shall receive such compensation for the performance of their duties as provided in § 2.2-2813. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Compensation to members of the General Assembly for attendance at official meetings of the Commission shall be paid by the offices of the Clerk of the House of Delegates or Clerk of the Senate, as applicable. All other compensation and expenses shall be paid from existing appropriations to the Commission or, if unfunded, shall be approved by the Joint Rules Committee.

§ 30-434. Powers and duties of the Commission.

The Commission shall have the following powers and duties:

1. Make recommendations to the Governor and General Assembly regarding artificial intelligence and any of its findings.

2. Study the impact of artificial intelligence on the workforce of the Commonwealth and strategies with which to prevent the occurrence of unlawful discrimination against individuals or groups in the use of artificial intelligence.

3. Assess potential options for an AI Bill of Rights concerning the regulation and use of artificial intelligence in the private sector that may be adopted in the Commonwealth.

4. Create a definition of artificial intelligence, develop ethical principles for the use of artificial intelligence and how such principles should be implemented in the Commonwealth, and recommend guidelines and restrictions for the collection, use, and sharing of personal information that are tailored to the requirements of a product or service.

5. Submit to the Governor and the General Assembly an annual report for publication as a report document as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports. The chairman of the Commission shall submit to the Governor and the General Assembly an annual executive summary of the interim activity and work of the Commission no later than the first day of each regular session of the General Assembly. The executive summary shall be submitted for publication as a report document as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

§ 30-435. Staffing.

The Joint Commission on Technology and Science shall provide staff support to the Commission. All agencies of the Commonwealth shall provide assistance to the Commission, upon request.

§ 30-436. Sunset.

This chapter shall expire on July 1, 2027.

2. That the provisions of § 2.2-5514.2 of the Code of Virginia, as created by this act, shall become effective on July 1, 2025.

3. That, for its first year of existence, if the Commission on Artificial Intelligence (the Commission) is not funded by a separate appropriation in the appropriation act, the Commission may be funded from the operating budgets of the Clerk of the House of Delegates and the Clerk of the Senate upon the approval of the Joint Rules Committee. If the Commission is not funded by a separate appropriation in the appropriation act for any year thereafter, this chapter shall expire on July 1 of the fiscal year in which the Commission fails to receive such funding.