

§ 23-4.3. Adoption of intellectual property policies; employees to be bound by such policies.

A. The boards of visitors of state-supported institutions of higher education and the State Board for Community Colleges shall adopt policies regarding the ownership, protection, assignment, and use of intellectual property.

B. All employees of state-supported institutions of higher education, including the Virginia Community College System, as a condition of employment, shall be bound by the intellectual property policies of the institution employing them.

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

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

(1986, c. 358; 2006, cc. 77, 899.)

Editor's note. - Acts 2006, cc. 77 and 899, cl. 3, provides: "That the Department of Planning and Budget working in cooperation with the state-supported institutions of higher education and the Joint Commission on Technology and Science shall issue by December 1, 2006, guidelines defining (i) the conditions under which projects are to be considered wholly or predominately funded by the general fund and (ii) procedures for an expedited review by the Governor of relevant transfers of intellectual properties."

The 2006 amendments. - The 2006 amendments by cc. 77 and 899 are identical and, in subsection A, substituted "policies regarding the ownership, protection, assignment, and use of intellectual property" for "patent and copyright policies consistent with the policy guidelines promulgated by the State Council of Higher Education working in cooperation with the state supported institutions of higher education pursuant to § 23-9.10:4. Such policies shall be submitted to the Council"; in subsection B, substituted "intellectual property" for "patent and copyright" and deleted the last sentence, relating to the application of policies for those not under contract; and added subsections C and D.

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

A. The boards of visitors, the State Board for Community Colleges, or their designees are authorized to assign any interest they possess in intellectual property or in materials in which the institution claims an interest, provided such assignment is in accordance with the terms of the institution's intellectual property policies adopted pursuant to subsection A of § 23-4.3. However, the Governor's prior written approval shall be required for transfers of such property developed wholly or predominately through the use of state general funds, exclusive of capital assets, and either (i) such property was developed by an employee of the institution acting within the scope of his assigned duties, or (ii) such property is to be transferred to an entity other than the Innovation and Entrepreneurship Investment Authority, an entity whose purpose is to manage intellectual properties on behalf of nonprofit organizations, colleges and universities, or an entity whose purpose is to benefit the respective institutions. The Governor may attach conditions to these transfers as he deems necessary. In the event the Governor does not approve such transfer, the materials shall remain the property of the respective institutions and may be used and developed in any manner permitted by law.

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

(1986, c. 358; 2003, c. 708; 2006, cc. 77, 899; 2009, cc. 325, 810.)

Editor's note. - Acts 2006, cc. 77 and 899, cl. 3, provides: "That the Department of Planning and Budget working in cooperation with the state-supported institutions of higher education and the Joint Commission on Technology and Science shall issue by December 1, 2006, guidelines defining (i) the conditions under which projects are to be considered wholly or predominately funded by the general fund and (ii) procedures for an expedited review by the Governor of relevant transfers of intellectual properties."

The 2003 amendments. - The 2003 amendment by c. 708 designated the existing provisions of the section as subsection A and added subsection B.

The 2006 amendments. - The 2006 amendments by cc. 77 and 899 are identical, and in subsection A, in the first sentence substituted "are authorized to assign" for "may transfer," "intellectual property" for "patents and copyrights" and "provided such assignment is in accordance with the terms of the institution's intellectual property policies adopted pursuant to subsection A of § 23-4.3" for "under its patent or copyright policy"; in the second sentence substituted "predominantly" for "significantly" and inserted "exclusive of capital assets"; and deleted the last sentence, relating to defining significant use and assigned duty; rewrote subsection B; and made stylistic changes.

The 2009 amendments. - The 2009 amendments by cc. 325 and 810 are identical, and substituted

"Innovation and Entrepreneurship Investment" for "Innovative Technology" in clause (ii) of subsection A.