

SENATE BILL NO. _____ HOUSE BILL NO. _____

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

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

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

6 § 23-4.3. Adoption of patent and copyright policies; employees to be bound by such policies.

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

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

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

22 § 23-4.4. Authorization to transfer interest; Governor's approval required under certain
23 circumstances.

24 A. The Boards of Visitors, the State Board for Community Colleges, or their designees ~~may~~
 25 ~~transfer~~ are authorized to assign any interest they possess in ~~patents and copyrights~~ intellectual property
 26 or in materials in which the institution claims an interest, provided such assignment is in accordance
 27 with the terms of its intellectual property under its patent or copyright policy adopted pursuant to
 28 subsection A of § 23-4.3. However, the Governor's prior written approval shall be required for transfers
 29 ~~of such property developed wholly or significantly through the use of state general funds and either (i)~~
 30 ~~such property was developed by an employee of the institution acting within the scope of his assigned~~
 31 ~~duties, or (ii) such property is to be transferred to an entity other than the Innovative Technology~~
 32 ~~Authority, an entity whose purpose is to manage intellectual properties on behalf of nonprofit~~
 33 ~~organizations, colleges and universities, or an entity whose purpose is to benefit the respective~~
 34 ~~institutions. The Governor may attach conditions to these transfers as he deems necessary. In the event~~
 35 ~~the Governor does not approve such transfer, the materials shall remain the property of the respective~~
 36 ~~institutions and may be used and developed in any manner permitted by law. The State Council of~~
 37 ~~Higher Education working in cooperation with the state-supported institutions of higher education and in~~
 38 ~~accordance with § 23-9.10:4 shall adopt a uniform statement defining (i) the conditions under which a~~
 39 ~~significant use of general funds occurs and (ii) the circumstances constituting an assigned duty.~~

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

45 **2. That § 23-9.10:4 [LR1] of the Code of Virginia is repealed.**

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