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SENATE BILL NO. 1238

Offered January 11, 2017

Prefiled January 10, 2017

A BILL to amend and reenact §§ 2.2-205, 2.2-206.2, 2.2-2235, 2.2-2238, and 2.2-2240.3 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 2.2-2236.1, 2.2-2236.2, and 2.2-2238.2, relating to the Virginia Economic Development Partnership Authority; Chief Executive Officer; powers and duties.

Patrons—Hanger and Carrico

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-205, 2.2-206.2, 2.2-2235, 2.2-2238, and 2.2-2240.3 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 2.2-2236.1, 2.2-2236.2, and 2.2-2238.2 as follows:

§ 2.2-205. Economic development policy for the Commonwealth.

A. During the first year of each new gubernatorial administration, the Secretary, with the assistance of a cabinet-level committee appointed in accordance with subsection B *and members of the Virginia Economic Development Partnership Authority Board of Directors*, shall develop and implement a written comprehensive economic development policy for the Commonwealth. In developing this policy, the Secretary and the committee shall review the economic development policy in effect at the commencement of the Governor's term of office. The Secretary shall make such revisions to the existing policy as the Secretary deems necessary to ensure that it is appropriate for the Commonwealth. Once the policy has been adopted by the Secretary and the committee and approved by the Governor, it shall be submitted to the General Assembly for its consideration *no later than October 1 of the first year of each new gubernatorial administration*.

B. During the first year of each new gubernatorial administration, the Governor shall issue an executive order creating a cabinet-level committee to assist the Secretary in the development of the comprehensive economic development policy for the Commonwealth. The Secretary shall be the chairman of the committee, and the Secretaries of Administration, Agriculture and Forestry, Education, Health and Human Resources, Natural Resources, Technology, and Transportation shall serve as committee members. *The Chief Executive Officer of the Virginia Economic Development Partnership Authority shall also serve as a member of the committee.* The Governor may also appoint members of regional and local economic development groups and members of the business community to serve on the committee. *The Virginia Economic Development Partnership Authority shall provide staff support and assistance to the committee in drafting the policy.*

§ 2.2-206.2. Economic incentive grant programs; responsibilities of the Secretary.

A. By July 15 of each year, the agencies listed in subdivisions B 1 through 7 shall report the information outlined in subsection C to the Secretary of Commerce and Trade for the three prior calendar or fiscal years, as applicable, so that the Secretary may develop and issue a report on the effectiveness of economic development incentive grant programs administered by the Commonwealth in meeting performance goals and stimulating economic activity. *The Virginia Economic Development Partnership Authority shall provide staff assistance and support to the Secretary in collecting, compiling, and drafting the report.*

By September 15 of each year, the Secretary shall submit the draft report to the Joint Legislative Audit and Review Commission for its review of the accuracy of the information contained in the report and the effectiveness of the evaluation methods.

The Joint Legislative Audit and Review Commission shall provide its comments on the content of the report and the Secretary's analysis to the Secretary, and such comments shall be included as an appendix to the final report, which shall be submitted to the Chairmen of the House Appropriations and Senate Finance Committees by November 15 of each year.

B. The report shall include a review of allocations from the following economic development incentive programs and funds for the previous three calendar or fiscal years, as applicable, as follows:

1. Virginia Economic Development Partnership: Advanced Shipbuilding Training Facility Grant Program, Aerospace Engine Manufacturing Performance Grant Program, Clean Energy Manufacturing Incentive Grant Program as it was in effect prior to July 1, 2015, Commonwealth's Development Opportunity Fund, Investment Partnership Grant subfund, Major Eligible Employer Grant subfund, Semiconductor Memory or Logic Wafer Manufacturing Performance Grant Program as it was in effect

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prior to July 1, 2016, Specialized Biotechnology Research Performance Grant Program as it was in effect prior to July 1, 2015, Economic Development Incentive Grant subfund, and any customized incentive grants;

2. Virginia Economic Development Partnership Authority: Virginia Jobs Investment Program;

3. Department of Housing and Community Development: Enterprise Zone Job Creation and Real Property Investment Grant Programs;

4. Tobacco Region Revitalization Commission: Tobacco Region Opportunity Fund;

5. Virginia Tourism Authority: Governor's Motion Picture Opportunity Fund;

6. Virginia Port Authority: Port of Virginia Economic and Infrastructure Development Grant Program; and

7. Innovation and Entrepreneurship Investment Authority: Growth Acceleration Program.

C. The report shall assess the effectiveness of allocations made for each program listed in subsection B. Each agency administering programs outlined in subsection B shall submit the applicable data regarding jobs, wages, capital investment, and any other related information requested by the Secretary of Commerce and Trade for purposes of evaluating economic development incentive programs in meeting their performance goals ~~and~~, stimulating economic activity, *and aligning with the economic development policy for the Commonwealth*.

For each program, the report shall include (i) an explanation of the overall goals of the program, describing whether the program is focused on job creation and capital investment or investments are governed by ancillary goals of community development and revitalization or the development of a particular industry sector in the Commonwealth; (ii) for each of the previous three calendar or fiscal years, as applicable, summary information, including the total amount of grant funding made available for the program, the total dollar amount of the grants awarded, the total number of grants awarded, the average dollar amount approved per job and average wage expected, where applicable, and any grant amounts repaid; (iii) for each of the three previous calendar or fiscal years, as applicable, for projects that have reached completion or a performance milestone, an aggregate comparison of the projects' performance measures, including the actual number of jobs created, the actual average wages paid, and the actual amount of capital investment, with the expected number of jobs, assumed average wage, and planned capital investment when the grant awards were made, and the proportion of projects that met or exceeded the project-specific goals relevant to the program; (iv) for each of the three previous calendar or fiscal years, as applicable, for all projects that have reached completion or a performance milestone, an aggregate assessment of the projects' actual rate of return on the Commonwealth's investment compared with the expected rate of return when the grant awards were made; (v) for each of the three previous calendar or fiscal years, as applicable, for all projects that have reached completion or a performance milestone, an aggregate estimate of the projects' total economic impact measured by the Virginia Economic Development Partnership Authority on the basis of estimated state tax revenues generated directly or indirectly by the projects, where applicable; and (vi) for all projects that reached completion five calendar or fiscal years, as applicable, prior to the year of the report, an aggregate final comparison of jobs reported by companies at the time of completion and jobs at the end of the most recent calendar year, and an aggregate final comparison of the projects' rate of return at the time of completion and a five-year rate of return based on the most recent job levels.

D. The Secretary may include for review under this section additional economic development incentive programs and funds that are administered by other state entities.

§ 2.2-2235. Board of directors; members and officers; Chief Executive Officer.

A. The Authority shall be governed by a board of directors consisting of the Lieutenant Governor, the Secretary of Agriculture and Forestry, the Secretary of Commerce and Trade, the Secretary of Finance, the Secretary of Technology, and the Chancellor of the Virginia Community College System, or their designees, serving as ex officio, voting members, and 18 members ~~to~~ *who shall* be appointed as follows: ~~(i) one from each congressional district in the Commonwealth and one citizen at large, appointed by the Governor, subject to confirmation by the General Assembly; (ii) four citizens at large appointed by the Speaker of the House; and (iii) two citizens at large appointed by the Senate Committee on Rules. The six citizens appointed by the General Assembly shall reside in regions of the Commonwealth that have a higher unemployment rate than that of the statewide average unemployment rate as reported by the Virginia Employment Commission for the preceding four years from the date of appointment. Ex officio members of the Board shall serve terms coincident with their terms of office. Four of the 12 directors initially appointed by the Governor shall be appointed for terms of two and one-half years, three for terms of four and one-half years, and five for terms of six and one-half years, from the effective date of their appointment; and thereafter the terms of members of the Board shall be six years~~

1. Twelve nonlegislative citizen members appointed by the Governor. The appointments shall be made by the Governor in the following manner: (i) four members from one or more of the following industry sectors: transportation, workforce, cyber, energy, higher education, biotechnology,

manufacturing, or defense, or from industries identified in the economic development policy for the Commonwealth; (ii) three members from one or more of the following business sectors: marketing, finance, grant administration, economic, or law; (iii) three members who represent state, regional, or local economic development agencies; and (iv) two members with experience in the fields of higher education or workforce development. In making the appointments, the Governor shall consider geographic representation of all parts of the Commonwealth;

2. Four nonlegislative citizen members appointed by the Speaker of the House of Delegates. The nonlegislative citizen members shall (i) be citizens of the Commonwealth and (ii) reside in regions of the Commonwealth that have a higher unemployment rate than the statewide average unemployment rate as reported by the Virginia Employment Commission for the preceding four years from the date of the appointment; and

3. Two nonlegislative citizen members appointed by the Senate Committee on Rules. The nonlegislative citizen members shall (i) be citizens of the Commonwealth and (ii) reside in regions of the Commonwealth that have a higher unemployment rate than the statewide average unemployment rate as reported by the Virginia Employment Commission for the preceding four years from the date of the appointment.

After the initial staggering of terms, nonlegislative citizen members shall be appointed for a term of four years. No member shall be eligible to serve more than two terms; however, after the expiration of the term of a member appointed to serve three years or less, two additional terms may be served if appointed thereto. Any appointment to fill a vacancy shall be for the unexpired term. A person appointed to fill a vacancy may be appointed to serve two additional terms. Members of the Board shall receive their expenses and shall be compensated at the rate provided in § 2.2-2104 for each day spent on the business of the Board. *Nonlegislative citizen members of the Authority shall be citizens of the Commonwealth. Ex officio members of the Board shall serve terms coincident with their terms of office.*

B. The Secretary of Commerce and Trade shall serve as chairman. The Board shall elect from its membership a ~~chairman and a~~ vice-chairman~~,~~ and shall also elect a secretary and a treasurer, who need not be members of the Board, and may also elect other subordinate officers, who need not be members of the Board. The Board may also form committees and advisory councils, which may include representatives who are not members of the Board, to undertake more extensive study and discussion of the issues before the Board.

C. A majority of the Board shall constitute a quorum for the transaction of the Authority's business, and no vacancy in the membership shall impair the right of a quorum to exercise the rights and perform all duties of the Authority. *The Board shall meet at least six times per year or at the call of its chairman.*

D. The Board shall appoint the chief executive officer of the Authority, who shall not be a member of the Board, whose title shall be President and Chief Executive Officer and may be referred to as the President or as the Chief Executive Officer, and who shall serve at the pleasure of the Board and carry out such of the powers and duties conferred upon him by the Board.

§ 2.2-2236.1. Additional duties of the Chief Executive Officer related to development and implementation of operational plan for Authority; review by Board; reporting.

A. The Chief Executive Officer shall develop a comprehensive operational plan for the Authority, including, at a minimum, the following components: (i) a plan for coordination with all state agencies administering economic development incentive programs to ensure communication and collaboration for the purposes of maximizing the effectiveness of state economic development programs, (ii) the results of the most recent survey of all economic development partners conducted pursuant to subsection E of § 2.2-2238, and (iii) an action plan to address appropriate concerns raised in the survey conducted pursuant to subsection E of § 2.2-2238. The initial operational plan shall be submitted to the Board on or before December 1, 2017, for review and approval. After approval by the Board, the Chief Executive Officer shall be responsible for the implementation of the operational plan. The Chief Executive Officer shall provide an update to the Board on the implementation of the operational plan at least annually or at any time upon request of the chairman of the Board. A comprehensive review of the operational plan shall be conducted by the Board every three years, and appropriate revisions and updates to the operational plan shall be made by the Chief Executive Officer.

B. The Chief Executive Officer shall provide a report on the economic development policy for the Commonwealth at each Board meeting. The report shall include:

1. An update on all grant awards made through the economic development incentive programs administered by the Authority, including (i) grant recipients, (ii) the amount awarded to each grant recipient, and (iii) the status of grant recipients in satisfying incentive program requirements; and

2. The status of progress on collaboration and coordination with nonstate economic development organizations, including regional and local economic and industrial development authorities.

§ 2.2-2236.2. Office of Internal Audit.

A. The Chief Executive Officer shall establish an Office of Internal Audit (the Office) within the Authority that shall report directly to the Chief Executive Officer.

B. The Office shall examine and evaluate the adequacy and effectiveness of the Authority's governance, risk management process, system of internal control structure, and quality of performance in carrying out statutorily assigned duties and responsibilities to achieve the Authority's established goals and objectives. In addition, the Office shall examine and evaluate the reliability and integrity of the Authority's financial and operational information.

C. The Office shall follow the International Standards for the Professional Practice of Internal Auditing and the Code of Ethics promulgated by the Institute of Internal Auditors.

§ 2.2-2238. Economic development services.

A. It shall be the duty of the Authority to encourage, stimulate, and support the development and expansion of the economy of the Commonwealth. The Authority is charged with the following duties and responsibilities to:

1. See that there are prepared and carried out effective economic development marketing and promotional programs;

2. Make available, in conjunction and cooperation with localities, chambers of commerce, industrial authorities, and other public and private groups, to prospective new businesses basic information and pertinent factors of interest and concern to such businesses;

3. Formulate, promulgate, and advance programs throughout the Commonwealth for encouraging the location of new businesses in the Commonwealth and the retention and growth of existing businesses;

4. Encourage and solicit private sector involvement, support, and funding for economic development in the Commonwealth;

5. ~~Encourage the coordination of~~ *Coordinate* the economic development efforts of public institutions, regions, communities, and private industry and collect and maintain data on the development and utilization of economic development capabilities;

6. Establish such offices within and without the Commonwealth that are necessary to the expansion and development of industries and trade;

7. Encourage the export of products and services from the Commonwealth to international markets;

8. Advise, upon request, the State Board for Community Colleges in designating technical training programs in Virginia's comprehensive community colleges for the Community College Incentive Scholarship Program pursuant to former § 23-220.4; and

9. Offer a program for the issuance of export documentation for companies located in Virginia exporting goods and services if no federal agency or other regulatory body or issuing entity will provide export documentation in a form deemed necessary for international commerce.

B. The Authority shall prepare a specific plan annually that shall serve as the basis for marketing high unemployment areas of Virginia. This plan shall be submitted to the Governor and General Assembly annually on or before November 1 of each year. The report shall contain the plan and activities conducted by the Authority to market these high unemployment areas. The annual report shall be part of the report required by § 2.2-2242.

C. The Authority may develop a site and building assessment program to identify and assess the Commonwealth's industrial sites of at least 250 acres. In developing such a program, the Authority shall establish assessment guidelines and procedures for identification of industrial sites, esource requirements, and development oversight. The Authority shall invite participation by regional and industry stakeholders to assess potential sites, identify product shortfalls, and make recommendations to the Governor and General Assembly for marketing such sites, in alignment with the goals outlined in the Governor's economic development plan.

D. The Authority may encourage the import of products and services from international markets to the Commonwealth.

E. The Authority shall conduct a survey of all economic development partners that assesses (i) the effectiveness of the Authority's coordination with nonstate economic development organizations and (ii) the alignment of the Authority's strategic plan with economic development partners. The survey shall be conducted at least every two years. The results of the most recent survey shall be included as a component of the operational plan developed by the Chief Executive Officer pursuant to § 2.2-2236.1.

§ 2.2-2238.2. Division of Grant Administration.

There is created within the Authority a Division of Grant Administration (the Division) to manage all incentive programs administered by the Authority. The Division shall ensure compliance with all statutory and contractual requirements for incentive programs administered by the Authority, including the execution of any actions to obtain repayment of grant funds on the basis of the failure by awardees to meet statutory and contractual requirements.

§ 2.2-2240.3. Definitions; Virginia Jobs Investment Program and Fund; composition; general qualifications.

A. As used in this section and §§ 2.2-2240.4, 2.2-2240.5, and 2.2-2240.6, unless the context requires

a different meaning:

"Capital investment" means an investment in real property, personal property, or both, at a manufacturing or basic nonmanufacturing facility within the Commonwealth that is or may be capitalized by the company and that establishes or increases the productivity of the manufacturing facility, results in the utilization of a more advanced technology than is in use immediately prior to such investment, or both.

"Full-time employee" means a natural person employed for indefinite duration in a position requiring a minimum of either (i) 35 hours of the employee's time per week for the entire normal year, which "normal year" shall consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary employees shall not qualify as new full-time employees under the Program.

"Fund" means the Virginia Jobs Investment Program Fund created in this section.

"Program" means the Virginia Jobs Investment Program created in this section.

B. There is hereby created the Virginia Jobs Investment Program to support private sector job creation by encouraging the expansion of existing Virginia businesses and the start-up of new business operations in Virginia. The Program shall support existing businesses and economic development prospects by offering funding to offset recruiting and training and retraining costs incurred by companies that are either creating new jobs or implementing technological upgrades and by providing assistance with workforce-related challenges and organizational development workshops.

C. The Program shall consist of the following component programs:

1. The Virginia New Jobs Program;

2. The Workforce Retraining Program; and

3. The Small Business New Jobs and Retraining Programs.

D. To be eligible for assistance under any of the component programs of the Program, a company shall:

1. Create or sustain employment for the Commonwealth in a basic sector industry or function, which would include businesses or functions that directly or indirectly derive more than 50 percent of their revenues from out-of-state sources, as determined by the Authority;

2. Pay a minimum entry-level wage rate per hour of at least 1.35 times the federal minimum wage. In areas that have an unemployment rate of one and one-half times the statewide average unemployment rate, the wage rate minimum may be waived by the Authority. Only full-time positions that qualify for benefits shall be eligible for assistance;

3. Meet such additional criteria as may be set forth by the Authority.

E. There is hereby established in the state treasury a special nonreverting fund to be known as the Virginia Jobs Investment Program Fund (the Fund). The Fund shall consist of any moneys appropriated thereto by the General Assembly from time to time and designated for the Fund. Any moneys deposited to or remaining in the Fund during or at the end of each fiscal year or biennium, including interest thereon, shall not revert to the general fund but shall remain in the Fund and be available for allocation under this article in ensuing fiscal years. Moneys in the Fund shall be used solely for grants to eligible businesses as permitted by the Program. The total amount of funds provided to eligible businesses under the Program for any year, shall not exceed the amount appropriated by the General Assembly to the Fund for such year, plus any carryover from previous years. *Grants shall be approved by the Governor and made in accordance with guidelines established by the Virginia Economic Development Partnership Authority.* Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the President and Chief Executive Officer or his designee. The Fund shall be administered by the President and Chief Executive Officer.

2. That this act shall not be construed to affect existing appointments to the Virginia Economic Development Partnership Authority by the Speaker of the House of Delegates or the Senate Committee on Rules whose terms have not expired. However, any new appointments shall be made in accordance with this act.

3. That beginning July 1, 2017, the terms of the 12 existing gubernatorial appointees of the Virginia Economic Development Partnership Authority shall be staggered as follows: (i) five members shall be appointed by the Governor to terms of one year, (ii) four members shall be appointed by the Governor to terms of two years, and (iii) three members shall be appointed by the Governor to terms of three years. Thereafter, appointments shall be made in accordance with the first enactment of this act.