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SENATE BILL NO. 1574

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology
on February 3, 2017)

(Patrons Prior to Substitute—Senators Ruff and Hanger [SB 1238])

A *BILL to amend and reenact § 60.2-114 of the Code of Virginia; to amend the Code of Virginia by adding sections numbered 2.2-2235.1, 2.2-2236.1, 2.2-2237.1, 2.2-2237.2, 2.2-2237.3, 2.2-2239.1, and 2.2-2239.2 and by adding in Article 1 of Chapter 31 of Title 58.1 a section numbered 58.1-3122.3; and to repeal § 2.2-2235 of the Code of Virginia, relating to the Virginia Economic Development Partnership Authority; membership; powers and duties.*

Be it enacted by the General Assembly of Virginia:

1. That § 60.2-114 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 2.2-2235.1, 2.2-2236.1, 2.2-2237.1, 2.2-2237.2, 2.2-2237.3, 2.2-2239.1, and 2.2-2239.2 and by adding in Article 1 of Chapter 31 of Title 58.1 a section numbered 58.1-3122.3 as follows:

§ 2.2-2235.1. Board of directors; members and officers; Chief Executive Officer.

A. *The Authority shall be governed by a board of directors (the Board) consisting of the Chairman of the Virginia Growth and Opportunity Board, or his designee, serving as an ex officio, voting member, and 13 members to be appointed as follows:*

1. Seven nonlegislative citizen members appointed by the Governor; and

2. Six nonlegislative citizen members appointed by the Joint Rules Committee.

B. *From the nonlegislative citizen membership, including the Chairman of the Virginia Growth and Opportunity Board and the 13 appointed nonlegislative citizen members, each of the regions designated by the Virginia Growth and Opportunity Board pursuant to § 2.2-2486 shall be represented. Additionally, the 13 appointed nonlegislative citizen members shall possess minimum qualifications and competencies as follows:*

1. Of the seven nonlegislative citizen members appointed by the Governor, one member shall be a member of the Governor's cabinet or the Lieutenant Governor, one member shall possess technology sector expertise, one member shall possess marketing expertise, one member shall possess international trade expertise, one member shall possess finance or grant administration expertise, one member shall possess business law expertise, and one member shall possess manufacturing sector expertise; and

2. Of the six nonlegislative citizen members appointed by the Joint Rules Committee, at least one member shall possess expertise in measuring the effectiveness of incentive programs, at least one member shall be an entrepreneur who has started his own business, at least one member shall possess state, regional, or local economic development expertise, at least one member shall possess expertise in pharmaceutical production or health care, and at least one member shall be from a rural area of the Commonwealth.

C. *Members shall serve terms of six years, except that ex officio members of the Board shall serve terms coincident with their terms of office. 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. Nonlegislative citizen members of the Board shall be citizens of the Commonwealth.*

D. *Members of the Board 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. Funding for the costs of compensation and expenses of the members shall be provided by the Authority.*

E. *The Board shall be deemed a supervisory board within the meaning of § 2.2-2100.*

F. *The Board shall elect a chairman and a vice-chairman from its membership 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 advisory committees, which may include representatives who are not members of the Board, to undertake more extensive study and discussion of the issues before the Board.*

G. *A majority of the members 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 meetings of the Board shall be held at the call of the chairman or whenever the majority of the members so request.*

H. *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*

60 President or as the Chief Executive Officer and who shall serve at the pleasure of the Board and carry
61 out such powers and duties conferred upon him by the Board.

62 **§ 2.2-2236.1. Internal auditor; duties.**

63 A. The Board shall appoint an internal auditor, who shall not be a member of the Board and who
64 shall report directly to the Board. The internal auditor shall have the following duties:

65 1. Perform periodic audits, as deemed advisable by the internal auditor, on all operations, accounts,
66 and transactions of the Authority, including the Division of Incentives, and report its findings to the
67 Board; and

68 2. Perform annual audits on all operations, accounts, and transactions of the Authority, including the
69 Division of Incentives, and report its findings to the Board.

70 B. After review by the Board, a copy of the audit reports required by subsection A shall be submitted
71 to the chairmen of the House Committee on Appropriations and the Senate Committee on Finance.

72 **§ 2.2-2237.1. Board to develop strategic plan for economic development; marketing plan;
73 operational plan; submission.**

74 A. The Board and the Chief Executive Officer shall develop and update biennially a strategic plan
75 for specific economic development activities for the Commonwealth as a whole. The strategic plan shall
76 be developed in conjunction with the development of the comprehensive economic development policy
77 required by § 2.2-205. The strategic plan of the Authority shall, at a minimum, include:

78 1. The identification of specific goals and objectives for the Authority and the development of
79 quantifiable metrics and performance measures for attaining each such goal and objective;

80 2. A systematic assessment of how the Authority can best add value in carrying out each of its
81 statutory powers and duties; and

82 3. Such other information deemed appropriate by the Board to ensure that the Authority fully
83 executes its powers and duties.

84 B. The Authority shall report annually on its strategic plan and its progress toward meeting the
85 goals and objectives as stated in the strategic plan to the chairmen of the House Committee on
86 Appropriations and the Senate Committee on Finance. Any modifications to the strategic plan shall be
87 promptly submitted to the chairmen of the House Committee on Appropriations and the Senate
88 Committee on Finance.

89 C. The Board shall include in its strategic planning process the participation of key economic
90 development partners, including state, regional, and local economic development agencies and
91 organizations and international trade organizations.

92 D. In addition, the Board and the Chief Executive Officer shall develop and update biennially:

93 1. A marketing plan for the Commonwealth as a whole. The marketing plan of the Authority shall, at
94 a minimum, include:

95 a. Identification of the Authority's specific and measurable marketing goals, and the timetable to
96 achieve such goals;

97 b. Identification of specific marketing activities;

98 c. The resources and staff allocated to such marketing activities; and

99 d. The development of quantifiable metrics and performance measures for attaining each such goal.

100 The Authority shall report annually on its marketing plan and its progress toward meeting the goals
101 and objectives as stated in the marketing plan to the chairmen of the House Committee on
102 Appropriations and the Senate Committee on Finance. Any modifications to the marketing plan shall be
103 promptly submitted to the chairmen of the House Committee on Appropriations and the Senate
104 Committee on Finance; and

105 2. An operational plan for carrying out the powers and duties of the Authority. Such plan shall
106 include a process to evaluate the Authority's effectiveness in exercising the powers and duties conferred
107 by this article, including the Authority's ability to work with other state, regional, and local economic
108 development organizations and international trade organizations. The Authority shall report annually on
109 its operational plan and its progress toward meeting the goals and objectives as stated in the
110 operational plan to the chairmen of the House Committee on Appropriations and the Senate Committee
111 on Finance. Any modifications to the operational plan shall be promptly submitted to the chairmen of
112 the House Committee on Appropriations and the Senate Committee on Finance.

113 E. The strategic and marketing plans required by this section shall not be exempt from disclosure
114 pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

115 **§ 2.2-2237.2. Office of the Attorney General to provide instruction to Board.**

116 The Attorney General or his designee assigned as counsel to the Board shall provide instruction to
117 the Board on its responsibilities and obligations as a supervisory board within 30 days after the initial
118 appointment of members of the Board. Thereafter, such counsel shall provide such instruction biennially.

119 **§ 2.2-2237.3. Division of Incentives.**

120 A. Within the Authority shall be created a Division of Incentives that shall be responsible for
121 tracking, managing, and coordinating the economic development incentives offered by the

Commonwealth and each locality for each approved project. Notwithstanding any other provision of law, approval of the Board shall be required to grant an extension for an approved project to meet the investment and job creation requirements set forth in the contract or memorandum of understanding. Notwithstanding any other provision of law, approval of both the Board and the MEI Project Approval Commission shall be required to grant any additional extensions.

B. Prior to certifying that an approved project has met the investment and job creation requirements set forth in the contract or memorandum of understanding, the Division of Incentives shall seek the certification of the Attorney General or his designee assigned as counsel to the Authority that such requirements have been met and that the approved project is not by law subject to the repayment of any portion of the public funds provided to the approved project.

C. Prior to seeking the repayment of any public funds from an approved project due to a failure of the project to meet the investment and job creation requirements set forth in the contract or memorandum of understanding, the Division of Incentives shall seek the review of the Attorney General or his designee assigned to the Authority to ensure that amount sought for repayment complies with all statutory requirements.

§ 2.2-2239.1. Advisory Committee on Business Development and Marketing.

A. The Board shall establish an Advisory Committee on Business Development and Marketing (the Advisory Committee) consisting of nine nonlegislative citizen members representing the regions designated by the Virginia Growth and Opportunity Board in accordance with § 2.2-2486 as follows:

1. Five nonlegislative citizen members possessing experience or expertise in business development or marketing, to be appointed by the Governor and approved by the General Assembly; and

2. Four nonlegislative citizen members possessing experience or expertise in business development or marketing to be appointed by the Joint Rules Committee.

After the initial staggering of terms, nonlegislative citizen members shall be appointed for a term of four years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All members may be reappointed. Members appointed to the Advisory Committee shall serve without compensation but 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. Staffing of the Advisory Committee shall be provided by the Authority. The Advisory Committee shall elect a chairman and vice-chairman from among its membership. A majority of the members shall constitute a quorum.

B. The Advisory Committee shall advise the Board on all matters relating to business development and marketing and shall make such recommendations as it may deem desirable.

§ 2.2-2239.2. Advisory Committee on International Trade.

A. The Board shall establish an Advisory Committee on International Trade (the Advisory Committee) consisting of the Secretary of Agriculture and Forestry, serving as an ex officio member with voting privileges and whose term is coincident with his term of office, and eight nonlegislative citizen members as follows:

1. One member who is a member of the Board of Commissioners of the Virginia Port Authority, and three nonlegislative citizen members possessing experience or expertise in international trade or trade promotion to be appointed by the Governor and approved by the General Assembly; and

2. Four nonlegislative citizen members possessing experience or expertise in international trade or trade promotion to be appointed by the Joint Rules Committee.

After the initial staggering of terms, nonlegislative citizen members shall be appointed for a term of four years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All members may be reappointed. Members appointed to the Advisory Committee shall serve without compensation but 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. Staffing of the Advisory Committee shall be provided by the Authority. The Advisory Committee shall elect a chairman and vice-chairman from among its membership. A majority of the members shall constitute a quorum.

B. The Advisory Committee shall advise the Board on all matters relating to international trade and trade promotion and shall make such recommendations as it may deem desirable.

§ 58.1-3122.3. Commissioners to provide certain information to the Virginia Economic Development Partnership Authority; confidentiality of such information.

A. Each commissioner of the revenue shall provide to the Virginia Economic Development Partnership Authority (the Authority), upon entering into a written agreement, such tax information as may be necessary to facilitate the administration and enforcement by the Authority of performance agreements with businesses that have received incentive awards, the provisions of § 58.1-3 notwithstanding.

B. Any tax information provided to the Authority under this section shall be confidential and shall

183 *not be divulged by the Authority. Any tax information so provided shall be used by the Authority solely*
184 *for the purpose of verifying capital investment claims of those businesses that have received incentive*
185 *awards.*

186 **§ 60.2-114. Records and reports.**

187 A. Each employing unit shall keep true and accurate work records, containing such information as
188 the Commission may prescribe. Such records shall be open to inspection and be subject to being copied
189 by the Commission or its authorized representatives at any reasonable time and as often as may be
190 necessary. The Commission may require from any employing unit any sworn or unsworn reports, with
191 respect to persons employed by it, which the Commission deems necessary for the effective
192 administration of this title. Information thus obtained shall not be published or be open to public
193 inspection, other than to public employees in the performance of their public duties, in any manner
194 revealing the employing unit's identity, except as the Commissioner or his delegates deem appropriate,
195 nor shall such information be used in any judicial or administrative proceeding other than one arising
196 out of the provisions of this title; however, the Commission shall make its records about a claimant
197 available to the Workers' Compensation Commission if it requests such records. However, any claimant
198 at a hearing before an appeal tribunal or the Commission shall be supplied with information from such
199 records to the extent necessary for the proper presentation of his claim. Notwithstanding other provisions
200 of this section, the Commissioner, or his delegate, may, in his discretion, reveal information when such
201 communication is not inconsistent with the proper administration of this title.

202 B. Notwithstanding the provisions of subsection A, the Commission shall, on a reimbursable basis,
203 furnish wage and unemployment compensation information contained in its records to the Secretary of
204 Health and Human Services and the Division of Child Support Enforcement of the Department of Social
205 Services for their use as necessary for the purposes of the National Directory of New Hires established
206 under § 453 (i) of the Social Security Act.

207 C. Notwithstanding the provisions of subsection A, the Commission shall, upon written request,
208 furnish any:

209 1. Any agency or political subdivision of the Commonwealth, or its designated agent, such
210 information as it may require for the purpose of collecting fines, penalties, and costs owed to the
211 Commonwealth or its political subdivisions. Such information shall not be published or used in any
212 administrative or judicial proceeding, except in matters arising out of the collection of fines, penalties,
213 and costs owed to the Commonwealth or its political subdivisions; and

214 2. *The Virginia Economic Development Partnership Authority such information as it may require to*
215 *facilitate the administration and enforcement by the Authority of performance agreements with*
216 *businesses that have received incentive awards. Any information provided to the Authority under this*
217 *subdivision shall be confidential and shall be disclosed only to members of the Authority who are public*
218 *officials or employees of the Authority for the performance of their official duties. No public official or*
219 *employee shall redisclose any confidential information obtained pursuant to this subdivision to*
220 *nonlegislative citizen members of the Authority or to the public. Any information so provided shall be*
221 *used by the Authority solely for the purpose of verifying employment and wage claims of those*
222 *businesses that have received incentive awards.*

223 D. Each employing unit shall report to the Virginia New Hire Reporting Center the employment of
224 any newly hired employee in compliance with § 63.2-1946.

225 E. Any member or employee of the Commission and any member, employee, or agent of any agency
226 or political subdivision of the Commonwealth who violates any provision of this section shall be guilty
227 of a Class 2 misdemeanor.

228 **2. That § 2.2-2235 of the Code of Virginia is repealed.**

229 **3. That the term of any person serving as a member of the board of directors of the Virginia**
230 **Economic Development Partnership Authority on January 1, 2017, that is set to expire on**
231 **December 31, 2017, shall expire on July 1, 2017.**

232 **4. That notwithstanding the provisions of § 2.2-2235.1 of the Code of Virginia, as created by this**
233 **act, the term of any person serving as a member of the board of directors of the Virginia**
234 **Economic Development Partnership Authority on January 1, 2017, that is set to expire in 2019**
235 **shall expire on June 30, 2019. When such term expires, members shall be appointed in accordance**
236 **with the provisions of § 2.2-2235.1 as follows: two nonlegislative citizen members appointed by the**
237 **Governor and two nonlegislative citizen members appointed by the Joint Rules Committee. Such**
238 **nonlegislative citizen members shall be appointed for terms that expire on June 30, 2025.**

239 **5. That notwithstanding the provisions of § 2.2-2235.1 of the Code of Virginia, as created by this**
240 **act, the term of any person serving as a member of the board of directors of the Virginia**
241 **Economic Development Partnership Authority on January 1, 2017, that is set to expire in 2021**
242 **shall expire on June 30, 2018. When such term expires on June 30, 2018, members shall be**
243 **appointed in accordance with the provisions of § 2.2-2235.1 as follows: four nonlegislative citizen**
244 **members appointed by the Governor and two nonlegislative citizen members appointed by the**

245 Joint Rules Committee. Such nonlegislative citizen members shall be appointed for terms that
246 expire on June 30, 2024.

247 6. That notwithstanding the provisions of § 2.2-2235.1 of the Code of Virginia, as created by this
248 act, the term of any person serving as a member of the board of directors of the Virginia
249 Economic Development Partnership Authority on January 1, 2017, that is set to expire in 2022
250 shall expire on June 30, 2020. When such term expires on June 30, 2020, two nonlegislative citizen
251 members shall be appointed by the Joint Rules Committee in accordance with the provisions of
252 § 2.2-2235.1. Such nonlegislative citizen members shall be appointed for terms that expire on June
253 30, 2026.

254 7. That any current member of the board of directors of the Virginia Economic Development
255 Partnership Authority is eligible for reappointment in accordance with the provisions of this act,
256 provided that such member meets the qualifications set forth in § 2.2-2235.1 of the Code of
257 Virginia, as created by this act.

258 8. That the initial appointments of the Advisory Committee on Business Development and
259 Marketing made in accordance with the provisions of this act shall be staggered as follows: (i) of
260 the five nonlegislative citizen members appointed by the Governor, two shall be appointed for a
261 term of two years, two shall be appointed for terms of three years, and one shall be appointed for
262 a term of four years and (ii) of the four nonlegislative citizen members appointed by the Joint
263 Rules Committee, two shall be appointed for terms of three years and two shall be appointed for a
264 term of four years. Thereafter, the terms of members of the Advisory Committee on Business
265 Development and Marketing shall be four years.

266 9. That the initial appointments of the Advisory Committee on International Trade made in
267 accordance with the provisions of this act shall be staggered as follows: (i) of the three
268 nonlegislative citizen members appointed by the Governor, one shall be appointed for a term of
269 one year, one shall be appointed for a term of two years, and one shall be appointed for a term of
270 three years and the member of the Board of Commissioners of the Virginia Port Authority shall
271 serve a term of four years and (ii) of the four nonlegislative citizen members appointed by the
272 Joint Rules Committee, one shall be appointed for a term of one year, one shall be appointed for a
273 term of three years and two shall be appointed for terms of four years. Thereafter, the terms of
274 members of the Advisory Committee on International Trade shall be four years.