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HOUSE BILL NO. 770

Offered January 10, 2018

Prefiled January 9, 2018

A BILL to amend and reenact §§ 2.2-2235.1 and 2.2-3711 of the Code of Virginia, relating to the Virginia Economic Development Partnership Authority.

Patrons—Jones, S.C. and Torian

Referred to Committee on Appropriations

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-2235.1 and 2.2-3711 of the Code of Virginia are amended and reenacted 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 Secretary of Commerce and Trade, the Secretary of Finance, the Chairman of the Virginia Growth and Opportunity Board, the Executive Director of the Virginia Port Authority, and the Staff Directors of the House Committee on Appropriations and the Senate Committee on Finance, serving as ex officio, voting members, and 11 *voting* members to be appointed as follows:

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

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

B.1. Each of the nine nonlegislative citizen members appointed by the Governor and the Joint Rules Committee shall possess expertise in at least one of the following areas: marketing; international commerce; finance or grant administration; state, regional, or local economic development; measuring the effectiveness of incentive programs; law; information technology; transportation; workforce development; manufacturing; biotechnology; cybersecurity; defense; energy; or any other industry identified in the comprehensive economic development policy developed pursuant to § 2.2-205.

2. Each of the nine regions defined by the Virginia Growth and Opportunity Board pursuant to subdivision A 1 of § 2.2-2486 shall be represented by at least one member of the Board. In determining such geographical representation, ex officio members of the Board may be considered to represent the region in which they serve in their official capacity.

C. After the initial staggering of terms, members shall serve terms of four 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 from the nonlegislative citizen members of the Board, and the Secretary of Commerce and Trade shall serve as vice-chairman. The Board 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 Chairman and the Vice-chairman, with approval by the Board, shall create an executive committee 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 least quarterly or at the call of the chairman.

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

§ 2.2-3711. Closed meetings authorized for certain limited purposes.

A. Public bodies may hold closed meetings only for the following purposes:

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59 1. Discussion, consideration, or interviews of prospective candidates for employment; assignment,
60 appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public
61 officers, appointees, or employees of any public body; and evaluation of performance of departments or
62 schools of public institutions of higher education where such evaluation will necessarily involve
63 discussion of the performance of specific individuals. Any teacher shall be permitted to be present
64 during a closed meeting in which there is a discussion or consideration of a disciplinary matter that
65 involves the teacher and some student and the student involved in the matter is present, provided the
66 teacher makes a written request to be present to the presiding officer of the appropriate board. Nothing
67 in this subdivision, however, shall be construed to authorize a closed meeting by a local governing body
68 or an elected school board to discuss compensation matters that affect the membership of such body or
69 board collectively.

70 2. Discussion or consideration of admission or disciplinary matters or any other matters that would
71 involve the disclosure of information contained in a scholastic record concerning any student of any
72 public institution of higher education in the Commonwealth or any state school system. However, any
73 such student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall
74 be permitted to be present during the taking of testimony or presentation of evidence at a closed
75 meeting, if such student, parents, or guardians so request in writing and such request is submitted to the
76 presiding officer of the appropriate board.

77 3. Discussion or consideration of the acquisition of real property for a public purpose, or of the
78 disposition of publicly held real property, where discussion in an open meeting would adversely affect
79 the bargaining position or negotiating strategy of the public body.

80 4. The protection of the privacy of individuals in personal matters not related to public business.

81 5. Discussion concerning a prospective business or industry or the expansion of an existing business
82 or industry where no previous announcement has been made of the business' or industry's interest in
83 locating or expanding its facilities in the community.

84 6. Discussion or consideration of the investment of public funds where competition or bargaining is
85 involved, where, if made public initially, the financial interest of the governmental unit would be
86 adversely affected.

87 7. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual
88 or probable litigation, where such consultation or briefing in open meeting would adversely affect the
89 negotiating or litigating posture of the public body. For the purposes of this subdivision, "probable
90 litigation" means litigation that has been specifically threatened or on which the public body or its legal
91 counsel has a reasonable basis to believe will be commenced by or against a known party. Nothing in
92 this subdivision shall be construed to permit the closure of a meeting merely because an attorney
93 representing the public body is in attendance or is consulted on a matter.

94 8. Consultation with legal counsel employed or retained by a public body regarding specific legal
95 matters requiring the provision of legal advice by such counsel. Nothing in this subdivision shall be
96 construed to permit the closure of a meeting merely because an attorney representing the public body is
97 in attendance or is consulted on a matter.

98 9. Discussion or consideration by governing boards of public institutions of higher education of
99 matters relating to gifts, bequests and fund-raising activities, and of grants and contracts for services or
100 work to be performed by such institution. However, the terms and conditions of any such gifts, bequests,
101 grants, and contracts made by a foreign government, a foreign legal entity, or a foreign person and
102 accepted by a public institution of higher education in the Commonwealth shall be subject to public
103 disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision,
104 (i) "foreign government" means any government other than the United States government or the
105 government of a state or a political subdivision thereof, (ii) "foreign legal entity" means any legal entity
106 (a) created under the laws of the United States or of any state thereof if a majority of the ownership of
107 the stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the
108 membership of any such entity is composed of foreign persons or foreign legal entities or (b) created
109 under the laws of a foreign government, and (iii) "foreign person" means any individual who is not a
110 citizen or national of the United States or a trust territory or protectorate thereof.

111 10. Discussion or consideration by the boards of trustees of the Virginia Museum of Fine Arts, the
112 Virginia Museum of Natural History, the Jamestown-Yorktown Foundation, and The Science Museum of
113 Virginia of matters relating to specific gifts, bequests, and grants from private sources.

114 11. Discussion or consideration of honorary degrees or special awards.

115 12. Discussion or consideration of tests, examinations, or other information used, administered, or
116 prepared by a public body and subject to the exclusion in subdivision 4 of § 2.2-3705.1.

117 13. Discussion, consideration, or review by the appropriate House or Senate committees of possible
118 disciplinary action against a member arising out of the possible inadequacy of the disclosure statement
119 filed by the member, provided the member may request in writing that the committee meeting not be
120 conducted in a closed meeting.

14. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement or to consider the terms, conditions, and provisions of a hazardous waste siting agreement if the governing body in open meeting finds that an open meeting will have an adverse effect upon the negotiating position of the governing body or the establishment of the terms, conditions and provisions of the siting agreement, or both. All discussions with the applicant or its representatives may be conducted in a closed meeting.

15. Discussion by the Governor and any economic advisory board reviewing forecasts of economic activity and estimating general and nongeneral fund revenues.

16. Discussion or consideration of medical and mental health records subject to the exclusion in subdivision 1 of § 2.2-3705.5.

17. Deliberations of the Virginia Lottery Board in a licensing appeal action conducted pursuant to subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and discussion, consideration or review of Virginia Lottery matters related to proprietary lottery game information and studies or investigations excluded from disclosure under subdivision 6 of § 2.2-3705.3 and subdivision 11 of § 2.2-3705.7.

18. Those portions of meetings in which the Board of Corrections discusses or discloses the identity of, or information tending to identify, any prisoner who (i) provides information about crimes or criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

19. Discussion of plans to protect public safety as it relates to terrorist activity or specific cybersecurity threats or vulnerabilities and briefings by staff members, legal counsel, or law-enforcement or emergency service officials concerning actions taken to respond to such matters or a related threat to public safety; discussion of information subject to the exclusion in subdivision 2 or 14 of § 2.2-3705.2, where discussion in an open meeting would jeopardize the safety of any person or the security of any facility, building, structure, information technology system, or software program; or discussion of reports or plans related to the security of any governmental facility, building or structure, or the safety of persons using such facility, building or structure.

20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of any local retirement system, acting pursuant to § 51.1-803, or by a local finance board or board of trustees of a trust established by one or more local public bodies to invest funds for postemployment benefits other than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title 15.2, or by the board of visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by the Board of the Virginia College Savings Plan, acting pursuant to § 23.1-706, regarding the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential analyses prepared for the board of visitors of the University of Virginia, prepared by the retirement system, or a local finance board or board of trustees, or the Virginia College Savings Plan or provided to the retirement system, a local finance board or board of trustees, or the Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity, and (ii) would have an adverse effect on the value of the investment to be acquired, held, or disposed of by the retirement system, a local finance board or board of trustees, the board of visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the identity of any investment held, the amount invested or the present value of such investment.

21. Those portions of meetings in which individual child death cases are discussed by the State Child Fatality Review team established pursuant to § 32.1-283.1, those portions of meetings in which individual child death cases are discussed by a regional or local child fatality review team established pursuant to § 32.1-283.2, those portions of meetings in which individual death cases are discussed by family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in which individual adult death cases are discussed by the state Adult Fatality Review Team established pursuant to § 32.1-283.5, and those portions of meetings in which individual adult death cases are discussed by a local or regional adult fatality review team established pursuant to § 32.1-283.6.

22. Those portions of meetings of the board of visitors of the University of Virginia or the Eastern Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any persons to whom management responsibilities for the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, have been delegated, in which there is discussed proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, including business development or marketing strategies and activities with existing or future joint venturers, partners, or other parties

182 with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case
183 may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such
184 information would adversely affect the competitive position of the Medical Center or Eastern Virginia
185 Medical School, as the case may be.

186 23. Discussion or consideration by the Virginia Commonwealth University Health System Authority
187 or the board of visitors of Virginia Commonwealth University of any of the following: the acquisition or
188 disposition by the Authority of real property, equipment, or technology software or hardware and related
189 goods or services, where disclosure would adversely affect the bargaining position or negotiating
190 strategy of the Authority; matters relating to gifts or bequests to, and fund-raising activities of, the
191 Authority; grants and contracts for services or work to be performed by the Authority; marketing or
192 operational strategies plans of the Authority where disclosure of such strategies or plans would adversely
193 affect the competitive position of the Authority; and members of the Authority's medical and teaching
194 staffs and qualifications for appointments thereto.

195 24. Those portions of the meetings of the Health Practitioners' Monitoring Program Committee within
196 the Department of Health Professions to the extent such discussions identify any practitioner who may
197 be, or who actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

198 25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein
199 personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees
200 by or on behalf of individuals who have requested information about, applied for, or entered into
201 prepaid tuition contracts or savings trust account agreements pursuant to Chapter 7 (§ 23.1-700 et seq.)
202 of Title 23.1 is discussed.

203 26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee created
204 pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et
205 seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of wireless
206 E-911 service.

207 27. Those portions of disciplinary proceedings by any regulatory board within the Department of
208 Professional and Occupational Regulation, Department of Health Professions, or the Board of
209 Accountancy conducted pursuant to § 2.2-4019 or 2.2-4020 during which the board deliberates to reach
210 a decision or meetings of health regulatory boards or conference committees of such boards to consider
211 settlement proposals in pending disciplinary actions or modifications to previously issued board orders as
212 requested by either of the parties.

213 28. Discussion or consideration of information subject to the exclusion in subdivision 11 of
214 § 2.2-3705.6 by a responsible public entity or an affected locality or public entity, as those terms are
215 defined in § 33.2-1800, or any independent review panel appointed to review information and advise
216 the responsible public entity concerning such records.

217 29. Discussion of the award of a public contract involving the expenditure of public funds, including
218 interviews of bidders or offerors, and discussion of the terms or scope of such contract, where
219 discussion in an open session would adversely affect the bargaining position or negotiating strategy of
220 the public body.

221 30. Discussion or consideration of grant or loan application information subject to the exclusion in
222 subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or (ii) the Innovation
223 and Entrepreneurship Investment Authority or the Research and Technology Investment Advisory
224 Committee appointed to advise the Innovation and Entrepreneurship Investment Authority.

225 31. Discussion or consideration by the Commitment Review Committee of information subject to the
226 exclusion in subdivision 5 of § 2.2-3705.2 relating to individuals subject to commitment as sexually
227 violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

228 32. Discussion or consideration of confidential proprietary information and trade secrets developed
229 and held by a local public body providing certain telecommunication services or cable television services
230 and subject to the exclusion in subdivision 18 of § 2.2-3705.6. However, the exemption provided by this
231 subdivision shall not apply to any authority created pursuant to the BVU Authority Act (§ 15.2-7200 et
232 seq.).

233 33. Discussion or consideration by a local authority created in accordance with the Virginia Wireless
234 Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary information and trade secrets
235 subject to the exclusion in subdivision 19 of § 2.2-3705.6.

236 34. Discussion or consideration by the State Board of Elections or local electoral boards of voting
237 security matters made confidential pursuant to § 24.2-625.1.

238 35. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee
239 created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of criminal investigative
240 files subject to the exclusion in subdivision A 2 a of § 2.2-3706.

241 36. Discussion or consideration by the Brown v. Board of Education Scholarship Committee of
242 information or confidential matters subject to the exclusion in subdivision 3 of § 2.2-3705.4, and
243 meetings of the Committee to deliberate concerning the annual maximum scholarship award, review and

consider scholarship applications and requests for scholarship award renewal, and cancel, rescind, or recover scholarship awards.

37. Discussion or consideration by the Virginia Port Authority of information subject to the exclusion in subdivision 1 of § 2.2-3705.6 related to certain proprietary information gathered by or for the Virginia Port Authority.

38. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College Savings Plan acting pursuant to § 23.1-706, or by the Virginia College Savings Plan's Investment Advisory Committee appointed pursuant to § 23.1-702 of information subject to the exclusion in subdivision 24 of § 2.2-3705.7.

39. Discussion or consideration of information subject to the exclusion in subdivision 3 of § 2.2-3705.6 related to economic development.

40. Discussion or consideration by the Board of Education of information relating to the denial, suspension, or revocation of teacher licenses subject to the exclusion in subdivision 11 of § 2.2-3705.3.

41. Those portions of meetings of the Virginia Military Advisory Council or any commission created by executive order for the purpose of studying and making recommendations regarding preventing closure or realignment of federal military and national security installations and facilities located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization appointed by a local governing body, during which there is discussion of information subject to the exclusion in subdivision 8 of § 2.2-3705.2.

42. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of information subject to the exclusion in subdivision 28 of § 2.2-3705.7 related to personally identifiable information of donors.

43. Discussion or consideration by the Virginia Tobacco Region Revitalization Commission of information subject to the exclusion in subdivision 23 of § 2.2-3705.6 related to certain information contained in grant applications.

44. Discussion or consideration by the board of directors of the Commercial Space Flight Authority of information subject to the exclusion in subdivision 24 of § 2.2-3705.6 related to rate structures or charges for the use of projects of, the sale of products of, or services rendered by the Authority and certain proprietary information of a private entity provided to the Authority.

45. Discussion or consideration of personal and proprietary information related to the resource management plan program and subject to the exclusion in (i) subdivision 25 of § 2.2-3705.6 or (ii) subsection E of § 10.1-104.7. This exclusion shall not apply to the discussion or consideration of records that contain information that has been certified for release by the person who is the subject of the information or transformed into a statistical or aggregate form that does not allow identification of the person who supplied, or is the subject of, the information.

46. Discussion or consideration by the Board of Directors of the Virginia Alcoholic Beverage Control Authority of information subject to the exclusion in subdivision 1 of § 2.2-3705.3 related to investigations of applicants for licenses and permits and of licensees and permittees.

47. Discussion or consideration of grant or loan application records subject to the exclusion in subdivision 28 of § 2.2-3705.6 related to the submission of an application for an award from the Virginia Research Investment Fund pursuant to Article 8 (§ 23.1-3130 et seq.) of Chapter 31 of Title 23.1 or interviews of parties to an application by a reviewing entity pursuant to subsection D of § 23.1-3133 or by the Virginia Research Investment Committee.

48. Discussion or development of grant proposals by a regional council established pursuant to Article 26 (§ 2.2-2484 et seq.) of Chapter 24 to be submitted for consideration to the Virginia Growth and Opportunity Board.

49. Discussion or consideration of (i) individual sexual assault cases by a sexual assault team established pursuant to § 15.2-1627.4 or (ii) individual child abuse or neglect cases or sex offenses involving a child by a child abuse team established pursuant to § 15.2-1627.5.

50. Discussion or consideration by the Board of the Virginia Economic Development Partnership Authority, the Joint Legislative Audit and Review Commission, or any subcommittee subcommittees thereof, of the portions of the strategic plan, marketing plan, or operational plan exempt from disclosure pursuant to subdivision 33 of § 2.2-3705.7.

51. Those portions of meetings of the subcommittee of the Board of the Virginia Economic Development Partnership Authority established pursuant to subsection F of § 2.2-2237.3 to review and discuss information received from the Virginia Employment Commission pursuant to subdivision C 2 of § 60.2-114.

B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a closed meeting shall become effective unless the public body, following the meeting, reconvenes in open

305 meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation, or
306 motion that shall have its substance reasonably identified in the open meeting.

307 C. Public officers improperly selected due to the failure of the public body to comply with the other
308 provisions of this section shall be de facto officers and, as such, their official actions are valid until they
309 obtain notice of the legal defect in their election.

310 D. Nothing in this section shall be construed to prevent the holding of conferences between two or
311 more public bodies, or their representatives, but these conferences shall be subject to the same
312 procedures for holding closed meetings as are applicable to any other public body.

313 E. This section shall not be construed to (i) require the disclosure of any contract between the
314 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1
315 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant
316 to the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body
317 empowered to issue industrial revenue bonds by general or special law, to identify a business or industry
318 to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of
319 public record at least 30 days prior to the actual date of the board's authorization of the sale or issuance
320 of such bonds.