

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 2.2-115, 2.2-2235.1, 2.2-2237.3, 2.2-2239.1, 2.2-2239.2, and 2.2-3711*
3 *of the Code of Virginia, relating to the Virginia Economic Development Partnership Authority.*

4 [H 770]
5 Approved

6 **Be it enacted by the General Assembly of Virginia:**
7 **1. That §§ 2.2-115, 2.2-2235.1, 2.2-2237.3, 2.2-2239.1, 2.2-2239.2, and 2.2-3711 of the Code of**
8 **Virginia are amended and reenacted as follows:**

9 **§ 2.2-115. Commonwealth's Development Opportunity Fund.**
10 A. As used in this section, unless the context requires otherwise:

11 "New job" means employment of an indefinite duration, created as the direct result of the private
12 investment, for which the firm pays the wages and standard fringe benefits for its employee, requiring a
13 minimum of either (i) 35 hours of the employee's time a week for the entire normal year of the firm's
14 operations, which "normal year" must consist of at least 48 weeks or (ii) 1,680 hours per year.

15 Seasonal or temporary positions, positions created when a job function is shifted from an existing
16 location in the Commonwealth to the location of the economic development project, positions with
17 suppliers, and multiplier or spin-off jobs shall not qualify as new jobs. The term "new job" shall include
18 positions with contractors provided that all requirements included within the definition of the term are
19 met.

20 "Prevailing average wage" means that amount determined by the Virginia Employment Commission
21 to be the average wage paid workers in the city or county of the Commonwealth where the economic
22 development project is located. The prevailing average wage shall be determined without regard to any
23 fringe benefits.

24 "Private investment" means the private investment required under this section.

25 B. There is created the Commonwealth's Development Opportunity Fund (the Fund) to be used by
26 the Governor to attract economic development prospects and secure the expansion of existing industry in
27 the Commonwealth. The Fund shall consist of any funds appropriated to it by the general appropriation
28 act and revenue from any other source, public or private. The Fund shall be established on the books of
29 the Comptroller, and any funds remaining in the Fund at the end of a biennium shall not revert to the
30 general fund but shall remain in the Fund. Interest earned on the Fund shall be credited to the Fund.
31 The Governor shall report to the Chairmen of the House Committees on Appropriations and Finance and
32 the Senate Committee on Finance as funds are awarded in accordance with this section.

33 C. Funds shall be awarded from the Fund by the Governor as grants or loans to political
34 subdivisions. The criteria for making such grants or loans shall include (i) job creation, (ii) private
35 capital investment, and (iii) anticipated additional state tax revenue expected to accrue to the state and
36 affected localities as a result of the capital investment and jobs created. Loans shall be approved by the
37 Governor and made in accordance with guidelines established by the Virginia Economic Development
38 Partnership and approved by the Comptroller. Loans shall be interest-free unless otherwise determined
39 by the Governor and shall be repaid to the Fund. The Governor may establish the interest rate to be
40 charged; otherwise, any interest charged shall be at market rates as determined by the State Treasurer
41 and shall be indicative of the duration of the loan. The Virginia Economic Development Partnership
42 shall be responsible for monitoring repayment of such loans and reporting the receivables to the
43 Comptroller as required.

44 Beginning with the five fiscal years from fiscal year 2006-2007 through fiscal year 2010-2011, and
45 for every five fiscal years' period thereafter, in general, no less than one-third of the moneys
46 appropriated to the Fund in every such five-year period shall be awarded to counties and cities having
47 an annual average unemployment rate that is greater than the final statewide average unemployment rate
48 for the calendar year that immediately precedes the calendar year of the award. However, if such
49 one-third requirement will not be met because economic development prospects in such counties and
50 cities are unable to fulfill the applicable minimum private investment and new jobs requirements set
51 forth in this section, then any funds remaining in the Fund at the end of the five-year period that would
52 have otherwise been awarded to such counties and cities shall be made available for awards in the next
53 five fiscal years' period.

54 D. Funds may be used for public and private utility extension or capacity development on and off
55 site; public and private installation, extension, or capacity development of high-speed or broadband
56 Internet access, whether on or off site; road, rail, or other transportation access costs beyond the funding

57 capability of existing programs; site acquisition; grading, drainage, paving, and any other activity
58 required to prepare a site for construction; construction or build-out of publicly or privately owned
59 buildings; training; or grants or loans to an industrial development authority, housing and redevelopment
60 authority, or other political subdivision for purposes directly relating to any of the foregoing. However,
61 in no case shall funds from the Fund be used, directly or indirectly, to pay or guarantee the payment for
62 any rental, lease, license, or other contractual right to the use of any property.

63 It shall be the policy of the Commonwealth that moneys in the Fund shall not be used for any
64 economic development project in which a business relocates or expands its operations in one or more
65 Virginia localities and simultaneously closes its operations or substantially reduces the number of its
66 employees in another Virginia locality, unless the procedures set forth in § 30-310 are followed. The
67 Secretary of Commerce and Trade shall enforce this policy and for any exception thereto shall, pursuant
68 to § 30-310, submit such projects to the MEI Project Approval Commission established pursuant to
69 § 30-309.

70 E. 1. a. Except as provided in this subdivision, no grant or loan shall be awarded from the Fund
71 unless the project involves a minimum private investment of \$5 million and creates at least 50 new jobs
72 for which the average wage, excluding fringe benefits, is no less than the prevailing average wage. For
73 projects, including but not limited to projects involving emerging technologies, for which the average
74 wage of the new jobs created, excluding fringe benefits, is at least twice the prevailing average wage for
75 that locality or region, the Governor shall have the discretion to require no less than one-half the
76 number of new jobs as set forth for that locality in this subdivision.

77 b. Notwithstanding the provisions of subdivision a, a grant or loan may be awarded from the Fund if
78 the project involves a minimum private investment of \$100 million and creates at least 25 new jobs for
79 which the average wage, excluding fringe benefits, is no less than the prevailing average wage.

80 2. Notwithstanding the provisions of subdivision 1 a, in localities (i) with an annual unemployment
81 rate for the most recent calendar year for which such data is available that is greater than the final
82 statewide average unemployment rate for that calendar year or (ii) with a poverty rate for the most
83 recent calendar year for which such data is available that exceeds the statewide average poverty rate for
84 that year, a grant or loan may be awarded from the Fund pursuant to subdivision 1 a if the project
85 involves a minimum private investment of \$2.5 million and creates at least 25 new jobs for which the
86 average wage, excluding fringe benefits, is no less than 85 percent of the prevailing average wage.

87 3. Notwithstanding the provisions of subdivisions 1 a and 2, in localities (i) with an annual
88 unemployment rate for the most recent calendar year for which such data is available that is greater than
89 the final statewide average unemployment rate for that calendar year and (ii) with a poverty rate for the
90 most recent calendar year for which such data is available that exceeds the statewide average poverty
91 rate for that year, a grant or loan may be awarded from the Fund pursuant to such subdivisions if the
92 project involves a minimum private investment of \$1.5 million and creates at least 15 new jobs for
93 which the average wage, excluding fringe benefits, is no less than 85 percent of the prevailing average
94 wage.

95 4. For projects that are eligible under subdivision 2 or 3, the average wage of the new jobs,
96 excluding fringe benefits, shall be no less than 85 percent of the prevailing average wage. In addition,
97 for projects in such localities, the Governor may award a grant or loan for a project paying less than 85
98 percent of the prevailing average wage but still providing customary employee benefits, only after the
99 Secretary of Commerce and Trade has made a written finding that the economic circumstances in the
100 area are sufficiently distressed (i.e., high unemployment or underemployment and negative economic
101 forecasts) that assistance to the locality to attract the project is nonetheless justified. However, the
102 minimum private investment and number of new jobs required to be created as set forth in this
103 subsection shall still be a condition of eligibility for an award from the Fund. Such written finding shall
104 promptly be provided to the chairs of the Senate Committee on Finance and the House Committee on
105 Appropriations.

106 F. 1. The Virginia Economic Development Partnership shall assist the Governor in developing
107 objective guidelines and criteria that shall be used in awarding grants or making loans from the Fund.
108 The guidelines may require that as a condition of receiving any grant or loan incentive that is based on
109 employment goals, a recipient company must provide copies of employer quarterly payroll reports that
110 have been provided to the Virginia Employment Commission to verify the employment status of any
111 position included in the employment goal. The guidelines may include a requirement for the affected
112 locality or localities to provide matching funds which may be cash or in-kind, at the discretion of the
113 Governor. The guidelines and criteria shall include provisions for geographic diversity and a cap on the
114 amount of funds to be provided to any individual project. At the discretion of the Governor, this cap
115 may be waived for qualifying projects of regional or statewide interest. In developing the guidelines and
116 criteria, the Virginia Economic Development Partnership shall use the measure for Fiscal Stress
117 published by the Commission on Local Government of the Department of Housing and Community

118 Development for the locality in which the project is located or will be located as one method of
119 determining the amount of assistance a locality shall receive from the Fund.

120 2. a. Notwithstanding any provision in this section or in the guidelines, each political subdivision that
121 receives a grant or loan from the Fund shall enter into a contract with *the Commonwealth, through the*
122 *Virginia Economic Development Partnership Authority as its agent, and* each business beneficiary of
123 funds from the Fund. A person or entity shall be a business beneficiary of funds from the Fund if grant
124 or loan moneys awarded from the Fund by the Governor are paid to a political subdivision and (i)
125 subsequently distributed by the political subdivision to the person or entity or (ii) used by the political
126 subdivision for the benefit of the person or entity but never distributed to the person or entity.

127 b. The contract between the political subdivision, *the Commonwealth,* and the business beneficiary
128 shall provide in detail (i) the fair market value of all funds that the Commonwealth has committed to
129 provide, (ii) the fair market value of all matching funds (or in-kind match) that the political subdivision
130 has agreed to provide, (iii) how funds committed by the Commonwealth (including but not limited to
131 funds from the Fund committed by the Governor) and funds that the political subdivision has agreed to
132 provide are to be spent, (iv) the minimum private investment to be made and the number of new jobs to
133 be created agreed to by the business beneficiary, (v) the average wage (excluding fringe benefits) agreed
134 to be paid in the new jobs, (vi) the prevailing average wage, and (vii) the formula, means, or processes
135 agreed to be used for measuring compliance with the minimum private investment and new jobs
136 requirements, including consideration of any layoffs instituted by the business beneficiary over the
137 course of the period covered by the contract.

138 The contract shall state the date by which the agreed upon private investment and new job
139 requirements shall be met by the business beneficiary of funds from the Fund and may provide for the
140 political subdivision *and the Commonwealth* to grant up to a 15-month extension of such date if deemed
141 appropriate by the political subdivision *and the Commonwealth* subsequent to the execution of the
142 contract. Any extension of such date granted by the political subdivision shall be in writing and
143 promptly delivered to the business beneficiary, and the political subdivision shall simultaneously provide
144 a copy of the extension to the Virginia Economic Development Partnership.

145 The contract shall provide that if the private investment and new job contractual requirements are not
146 met by the expiration of the date stipulated in the contract, including any extension granted by the
147 political subdivision *and the Commonwealth,* the business beneficiary shall be liable to the political
148 subdivision *and the Commonwealth* for repayment of a portion of the funds provided *by the political*
149 *subdivision under the contract and liable to the Commonwealth for repayment of a portion of the funds*
150 *provided from the Commonwealth's Development Opportunity Fund.* The contract shall include a formula
151 for purposes of determining the portion of such funds to be repaid. The formula shall, in part, be based
152 upon the fair market value of all funds that have been provided by the Commonwealth and the political
153 subdivision and the extent to which the business beneficiary has met the private investment and new job
154 contractual requirements. ~~Any~~ All such funds repaid to the political subdivision *or the Commonwealth*
155 that relate to the award from the Commonwealth's Development Opportunity Fund shall promptly be
156 ~~paid over by the political subdivision to the Commonwealth by payment~~ remitted to the State Treasurer.
157 Upon receipt by the State Treasurer of such payment, the Comptroller shall deposit such repaid funds
158 into the Commonwealth's Development Opportunity Fund.

159 c. The contract shall be amended to reflect changes in the funds committed by the Commonwealth or
160 agreed to be provided by the political subdivision.

161 d. Notwithstanding any provision in this section or in the guidelines, whenever layoffs instituted by a
162 business beneficiary over the course of the period covered by a contract cause the net total number of
163 the new jobs created to be fewer than the number agreed to, then the business beneficiary shall return
164 the portion of any funds received pursuant to the repayment formula established by the contract.

165 3. Notwithstanding any provision in this section or in the guidelines, prior to executing any such
166 contract with a business beneficiary, the political subdivision shall provide a copy of the proposed
167 contract to the Attorney General. The Attorney General shall review the proposed contract (i) for
168 enforceability as to its provisions and (ii) to ensure that it is in appropriate legal form. The Attorney
169 General shall provide any written suggestions to the political subdivision within seven days of his
170 receipt of the copy of the contract. The Attorney General's suggestions shall be limited to the
171 enforceability of the contract's provisions and the legal form of the contract.

172 4. Notwithstanding any provision in this section or in the guidelines, a political subdivision shall not
173 expend, distribute, pledge, use as security, or otherwise use any award from the Fund unless and until
174 such contract as described herein is executed with the business beneficiary.

175 G. Within the 30 days immediately following June 30 and December 30 of each year, the Governor
176 shall provide a report to the Chairmen of the House Committees on Appropriations and Finance and the
177 Senate Committee on Finance which shall include, but is not limited to, the following information
178 regarding grants and loans awarded from the Fund during the immediately preceding six-month period

179 for economic development projects: the name of the company that is the business beneficiary of the
 180 grant or loan and the type of business in which it engages; the location (county, city, or town) of the
 181 project; the amount of the grant or loan committed from the Fund and the amount of all other funds
 182 committed by the Commonwealth from other sources and the purpose for which such grants, loans, or
 183 other funds will be used; the amount of all moneys or funds agreed to be provided by political
 184 subdivisions and the purposes for which they will be used; the number of new jobs agreed to be created
 185 by the business beneficiary; the amount of investment in the project agreed to be made by the business
 186 beneficiary; the timetable for the completion of the project and new jobs created; the prevailing average
 187 wage; and the average wage (excluding fringe benefits) agreed to be paid in the new jobs.

188 H. The Governor shall provide grants and commitments from the Fund in an amount not to exceed
 189 the dollar amount contained in the Fund. If the Governor commits funds for years beyond the fiscal
 190 years covered under the existing appropriation act, the State Treasurer shall set aside and reserve the
 191 funds the Governor has committed, and the funds shall remain in the Fund for those future fiscal years.
 192 No grant or loan shall be payable in the years beyond the existing appropriation act unless the funds are
 193 currently available in the Fund.

194 I. On a quarterly basis, the Virginia Economic Development Partnership shall notify the Governor,
 195 his campaign committee, and his political action committee of awards from the Fund made in the prior
 196 quarter. Within 18 months of the date of each award from the Fund, the Governor, his campaign
 197 committee, and his political action committee shall submit to the Virginia Conflict of Interest and Ethics
 198 Advisory Council established in § 30-355 a report listing any contribution, gift, or other item with a
 199 value greater than \$100 provided by the business beneficiary of such award to the Governor, his
 200 campaign committee, or his political action committee, respectively, during (i) the period in which the
 201 business beneficiary's application for such award was pending and (ii) the one-year period immediately
 202 after any such award was made.

203 **§ 2.2-2235.1. Board of directors; members and officers; Chief Executive Officer.**

204 A. The Authority shall be governed by a board of directors (the Board) consisting of the Secretary of
 205 Commerce and Trade, the Secretary of Finance, the Chairman of the Virginia Growth and Opportunity
 206 Board, the Executive Director of the Virginia Port Authority, and the Staff Directors of the House
 207 Committee on Appropriations and the Senate Committee on Finance, serving as *ex officio*, voting
 208 members, and 11 *voting* members to be appointed as follows:

- 209 1. Seven nonlegislative citizen members appointed by the Governor; and
- 210 2. Four nonlegislative citizen members appointed by the Joint Rules Committee.

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

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

221 C. After the initial staggering of terms, members shall serve terms of four years, except that *ex*
 222 *officio* members of the Board shall serve terms coincident with their terms of office. No member shall
 223 be eligible to serve more than two terms; however, after the expiration of the term of a member
 224 appointed to serve three years or less, two additional terms may be served if appointed thereto. Any
 225 appointment to fill a vacancy shall be for the unexpired term. A person appointed to fill a vacancy may
 226 be appointed to serve two additional terms. Nonlegislative citizen members of the Board shall be
 227 citizens of the Commonwealth.

228 D. Members of the Board shall receive such compensation for the performance of their duties as
 229 provided in § 2.2-2813. All members shall be reimbursed for all reasonable and necessary expenses
 230 incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the
 231 costs of compensation and expenses of the members shall be provided by the Authority.

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

233 F. The Board shall elect a chairman from the nonlegislative citizen members of the Board, and the
 234 Secretary of Commerce and Trade shall serve as vice-chairman. The Board shall also elect a secretary
 235 and a treasurer, who need not be members of the Board, and may also elect other subordinate officers,
 236 who need not be members of the Board. The Chairman and the Vice-chairman, with approval by the
 237 Board, shall create an executive committee of the Board. The Board may also form advisory
 238 committees, which may include representatives who are not members of the Board, to undertake more
 239 extensive study and discussion of the issues before the Board.

240 G. A majority of the members shall constitute a quorum for the transaction of the Authority's
 241 business, and no vacancy in the membership shall impair the right of a quorum to exercise the rights
 242 and perform all duties of the Authority. The meetings of the Board shall be held at least quarterly or at
 243 the call of the chairman.

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

248 **§ 2.2-2237.3. Division of Incentives.**

249 A. Within the Authority shall be created a Division of Incentives that shall be responsible for
 250 reviewing, vetting, tracking, and coordinating economic development incentives administered by or
 251 through the Authority or economic development incentives offered by the Commonwealth or a locality
 252 in conjunction with Authority-administered incentives, including those listed in § 2.2-206.2.

253 B. No project that includes an offer of economic development incentives by the Commonwealth,
 254 including grants or loans from the Commonwealth's Development Opportunity Fund, shall be approved
 255 by the Governor until (i) the Division of Incentives has undertaken appropriate due diligence regarding
 256 the proposed project and the Secretary of Commerce and Trade has certified that the proposed incentives
 257 to be offered are appropriate based on the investment and job creation anticipated to be generated by the
 258 project and (ii) when required by § 30-310, the MEI Project Approval Commission has reviewed the
 259 proposed incentives.

260 C. Any contract or memorandum of understanding for the award of economic development incentives
 261 by the Commonwealth shall set forth the investment and job creation requirements for the payment of
 262 the incentive and shall include a stipulation that the business beneficiary of the incentives shall be liable
 263 for the repayment of all or a portion of the incentives *to the Commonwealth* if the business beneficiary
 264 fails to make the required investments or create the required number of jobs. *For purposes of this*
 265 *section, an incentive awarded by the Commonwealth shall include an incentive awarded from a fund*
 266 *operated by the Commonwealth, including the Commonwealth's Development Opportunity Fund.* If it is
 267 determined that a business beneficiary is liable for the repayment of all or a portion of an economic
 268 development incentive awarded by the ~~Board Commonwealth~~, the Board may ~~direct refer~~ the matter to
 269 the Office of the Attorney General ~~to enforce the provisions of the contract or memorandum of~~
 270 ~~understanding regarding the repayment pursuant to § 2.2-518.~~ *Prior to the referral to the Office of the*
 271 *Attorney General, the Board shall direct any political subdivision that is a party to the relevant contract*
 272 *or memorandum of understanding to assign its rights to the Commonwealth arising under such contract*
 273 *or memorandum of understanding in which the business beneficiary is liable to repay all or a portion of*
 274 *an economic development incentive awarded by the Commonwealth. In any such matter referred to the*
 275 *Office of the Attorney General, a business beneficiary liable to repay all or a portion of an economic*
 276 *development incentive awarded by the Commonwealth shall also be liable to pay interest, administrative*
 277 *charges, attorney fees, and other applicable fees.*

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

283 E. The Division of Incentives shall provide semiannual updates to the Board of the status and
 284 progress of investment and job creation requirements for all projects for which economic development
 285 incentives have been awarded, until such time as the investment and job creation requirements are met
 286 or the incentives are repaid to the Commonwealth. Updates shall be provided more frequently upon the
 287 request of the Board, or if deemed necessary by the Division of Incentives.

288 F. The Board shall establish a subcommittee, consisting of ex officio members of the Board
 289 authorized pursuant to § 60.2-114 and federal law to receive and review employment information
 290 received from the Virginia Employment Commission, in order to assist the Division of Incentives with
 291 the verification of employment and wage claims of those businesses that have received incentive awards.
 292 Such information shall be confidential and shall not be (i) redisclosed to other members of the Board or
 293 to the public in accordance with the provisions of subdivision C 2 of § 60.2-114 or (ii) subject to
 294 disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

295 G. *For purposes of this section, the award of economic development incentives by the Commonwealth*
 296 *shall include an award of funds from the Commonwealth's Development Opportunity Fund, regardless of*
 297 *whether the contract or memorandum of understanding for the disbursement of funds is with the*
 298 *Commonwealth or a political subdivision thereof and the business beneficiary.*

299 **§ 2.2-2239.1. Advisory Committee on Business Development and Marketing.**

300 A. The Board shall establish a *an* Advisory Committee on Business Development and Marketing (the

301 Committee) consisting of ~~nine~~ 10 nonlegislative citizen members representing local or regional economic
 302 development entities from each of the regions designated by the Virginia Growth and Opportunity Board
 303 in accordance with § 2.2-2486 as follows:

304 1. Four nonlegislative citizen members, at least one of whom shall be from Northern Virginia, one of
 305 whom shall be from Hampton Roads, and one of whom shall be from Richmond, to be appointed by the
 306 Governor and approved by the General Assembly; ~~and~~

307 2. Five nonlegislative citizen members appointed by the Joint Rules Committee; *and*

308 3. *One nonlegislative citizen member of the Board appointed by the Chairman of the Board.*

309 B. After the initial staggering of terms, nonlegislative citizen members shall be appointed for a term
 310 of four years. Appointments to fill vacancies, other than by expiration of a term, shall be for the
 311 unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All
 312 members may be reappointed. Members appointed to the Committee shall serve without compensation
 313 but shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their
 314 duties as provided in §§ 2.2-2813 and 2.2-2825. *Staffing of Administrative and staff support for the*
 315 *Committee shall be provided by the Authority upon approval of the Chairman of the Board or the Chief*
 316 *Executive Officer.* The Committee shall elect a chairman and vice-chairman from among its membership.
 317 A majority of the members shall constitute a quorum.

318 C. The Committee shall advise the Board on all matters relating to business development and
 319 marketing and shall make ~~such~~ recommendations as ~~it may deem desirable~~ upon request of the Board.

320 **§ 2.2-2239.2. Advisory Committee on International Trade.**

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

325 1. One member who is a member of the Board of Commissioners of the Virginia Port Authority and
 326 two nonlegislative citizen members possessing experience or expertise in international trade or trade
 327 promotion appointed by the Governor and approved by the General Assembly; ~~and~~

328 2. Five nonlegislative citizen members possessing experience or expertise in international trade or
 329 trade promotion appointed by the Joint Rules Committee; *and*

330 3. *One nonlegislative citizen member of the Board appointed by the Chairman of the Board.*

331 The Virginia Manufacturing Association shall submit to the Governor and the Joint Rules Committee
 332 a list of 12 recommendations for appointments to the Committee. One of the Governor's appointments
 333 pursuant to subdivision 1 shall be made from such list, and two of the Joint Rules Committee's
 334 appointments pursuant to subdivision 2 shall be made from such list.

335 B. After the initial staggering of terms, nonlegislative citizen members shall be appointed for a term
 336 of four years. Appointments to fill vacancies, other than by expiration of a term, shall be for the
 337 unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All
 338 members may be reappointed. Members appointed to the Committee shall serve without compensation
 339 but shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their
 340 duties as provided in §§ 2.2-2813 and 2.2-2825. *Staffing of Administrative and staff support for the*
 341 *Committee shall be provided by the Authority upon approval of the Chairman of the Board or the Chief*
 342 *Executive Officer.* The Committee shall elect a chairman and vice-chairman from among its membership.
 343 A majority of the members shall constitute a quorum.

344 C. The Committee shall advise the Board on all matters relating to international trade and trade
 345 promotion and shall make ~~such~~ recommendations as ~~it may deem desirable~~ upon request of the Board.

346 **§ 2.2-3711. Closed meetings authorized for certain limited purposes.**

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

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

359 2. Discussion or consideration of admission or disciplinary matters or any other matters that would
 360 involve the disclosure of information contained in a scholastic record concerning any student of any
 361 public institution of higher education in the Commonwealth or any state school system. However, any

362 such student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall
 363 be permitted to be present during the taking of testimony or presentation of evidence at a closed
 364 meeting, if such student, parents, or guardians so request in writing and such request is submitted to the
 365 presiding officer of the appropriate board.

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

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

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

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

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

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

387 9. Discussion or consideration by governing boards of public institutions of higher education of
 388 matters relating to gifts, bequests and fund-raising activities, and of grants and contracts for services or
 389 work to be performed by such institution. However, the terms and conditions of any such gifts, bequests,
 390 grants, and contracts made by a foreign government, a foreign legal entity, or a foreign person and
 391 accepted by a public institution of higher education in the Commonwealth shall be subject to public
 392 disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision,
 393 (i) "foreign government" means any government other than the United States government or the
 394 government of a state or a political subdivision thereof, (ii) "foreign legal entity" means any legal entity
 395 (a) created under the laws of the United States or of any state thereof if a majority of the ownership of
 396 the stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the
 397 membership of any such entity is composed of foreign persons or foreign legal entities or (b) created
 398 under the laws of a foreign government, and (iii) "foreign person" means any individual who is not a
 399 citizen or national of the United States or a trust territory or protectorate thereof.

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

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

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

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

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

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

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

420 17. Deliberations of the Virginia Lottery Board in a licensing appeal action conducted pursuant to
 421 subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and
 422 discussion, consideration or review of Virginia Lottery matters related to proprietary lottery game

423 information and studies or investigations excluded from disclosure under subdivision 6 of § 2.2-3705.3
424 and subdivision 11 of § 2.2-3705.7.

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

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

438 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or
439 of any local retirement system, acting pursuant to § 51.1-803, or by a local finance board or board of
440 trustees of a trust established by one or more local public bodies to invest funds for postemployment
441 benefits other than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title
442 15.2, or by the board of visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by the
443 Board of the Virginia College Savings Plan, acting pursuant to § 23.1-706, regarding the acquisition,
444 holding or disposition of a security or other ownership interest in an entity, where such security or
445 ownership interest is not traded on a governmentally regulated securities exchange, to the extent that
446 such discussion (i) concerns confidential analyses prepared for the board of visitors of the University of
447 Virginia, prepared by the retirement system, or a local finance board or board of trustees, or the Virginia
448 College Savings Plan or provided to the retirement system, a local finance board or board of trustees, or
449 the Virginia College Savings Plan under a promise of confidentiality, of the future value of such
450 ownership interest or the future financial performance of the entity, and (ii) would have an adverse
451 effect on the value of the investment to be acquired, held, or disposed of by the retirement system, a
452 local finance board or board of trustees, the board of visitors of the University of Virginia, or the
453 Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure
454 of information relating to the identity of any investment held, the amount invested or the present value
455 of such investment.

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

464 22. Those portions of meetings of the board of visitors of the University of Virginia or the Eastern
465 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any
466 persons to whom management responsibilities for the University of Virginia Medical Center or Eastern
467 Virginia Medical School, as the case may be, have been delegated, in which there is discussed
468 proprietary, business-related information pertaining to the operations of the University of Virginia
469 Medical Center or Eastern Virginia Medical School, as the case may be, including business development
470 or marketing strategies and activities with existing or future joint venturers, partners, or other parties
471 with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case
472 may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such
473 information would adversely affect the competitive position of the Medical Center or Eastern Virginia
474 Medical School, as the case may be.

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

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

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

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

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

502 28. Discussion or consideration of information subject to the exclusion in subdivision 11 of
 503 § 2.2-3705.6 by a responsible public entity or an affected locality or public entity, as those terms are
 504 defined in § 33.2-1800, or any independent review panel appointed to review information and advise the
 505 responsible public entity concerning such records.

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

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

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

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

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

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

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

530 36. Discussion or consideration by the Brown v. Board of Education Scholarship Committee of
 531 information or confidential matters subject to the exclusion in subdivision 3 of § 2.2-3705.4, and
 532 meetings of the Committee to deliberate concerning the annual maximum scholarship award, review and
 533 consider scholarship applications and requests for scholarship award renewal, and cancel, rescind, or
 534 recover scholarship awards.

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

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

544 39. Discussion or consideration of information subject to the exclusion in subdivision 3 of

545 § 2.2-3705.6 related to economic development.

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

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

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

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

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

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

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

573 47. Discussion or consideration of grant or loan application records subject to the exclusion in
574 subdivision 28 of § 2.2-3705.6 related to the submission of an application for an award from the
575 Virginia Research Investment Fund pursuant to Article 8 (§ 23.1-3130 et seq.) of Chapter 31 of Title
576 23.1 or interviews of parties to an application by a reviewing entity pursuant to subsection D of
577 § 23.1-3133 or by the Virginia Research Investment Committee.

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

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

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

588 51. Those portions of meetings of the subcommittee of the Board of the Virginia Economic
589 Development Partnership Authority established pursuant to subsection F of § 2.2-2237.3 to review and
590 discuss information received from the Virginia Employment Commission pursuant to subdivision C 2 of
591 § 60.2-114.

592 B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a
593 closed meeting shall become effective unless the public body, following the meeting, reconvenes in open
594 meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation, or
595 motion that shall have its substance reasonably identified in the open meeting.

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

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

602 E. This section shall not be construed to (i) require the disclosure of any contract between the
603 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1
604 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant
605 to the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body

606 empowered to issue industrial revenue bonds by general or special law, to identify a business or industry
607 to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of
608 public record at least 30 days prior to the actual date of the board's authorization of the sale or issuance
609 of such bonds.
610 **2. That the provisions of this act amending subsection C of § 2.2-2237.3 of the Code of Virginia**
611 **regarding the assignment of rights of a political subdivision in certain situations shall apply to all**
612 **contracts and memorandums of understanding for the award of economic development incentives**
613 **by the Commonwealth, including those that were executed prior to the codification of this act.**
614 **3. That an emergency exists and this act is in force from its passage.**