

18107640D

**HOUSE BILL NO. 770****AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the Senate Committee on Finance  
on February 28, 2018)

(Patron Prior to Substitute—Delegate Jones, S.C.)

*A BILL 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 of the Code of Virginia, relating to the Virginia Economic Development Partnership Authority.*

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

**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 Virginia are amended and reenacted as follows:**

**§ 2.2-115. Commonwealth's Development Opportunity Fund.**

A. As used in this section, unless the context requires otherwise:

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

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

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

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

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

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

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

D. Funds may be used for public and private utility extension or capacity development on and off site; public and private installation, extension, or capacity development of high-speed or broadband Internet access, whether on or off site; road, rail, or other transportation access costs beyond the funding capability of existing programs; site acquisition; grading, drainage, paving, and any other activity

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

65 It shall be the policy of the Commonwealth that moneys in the Fund shall not be used for any  
66 economic development project in which a business relocates or expands its operations in one or more  
67 Virginia localities and simultaneously closes its operations or substantially reduces the number of its  
68 employees in another Virginia locality, unless the procedures set forth in § 30-310 are followed. The  
69 Secretary of Commerce and Trade shall enforce this policy and for any exception thereto shall, pursuant  
70 to § 30-310, submit such projects to the MEI Project Approval Commission established pursuant to  
71 § 30-309.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

G. Within the 30 days immediately following June 30 and December 30 of each year, the Governor shall provide a report to the Chairmen of the House Committees on Appropriations and Finance and the Senate Committee on Finance which shall include, but is not limited to, the following information regarding grants and loans awarded from the Fund during the immediately preceding six-month period for economic development projects: the name of the company that is the business beneficiary of the grant or loan and the type of business in which it engages; the location (county, city, or town) of the

183 project; the amount of the grant or loan committed from the Fund and the amount of all other funds  
184 committed by the Commonwealth from other sources and the purpose for which such grants, loans, or  
185 other funds will be used; the amount of all moneys or funds agreed to be provided by political  
186 subdivisions and the purposes for which they will be used; the number of new jobs agreed to be created  
187 by the business beneficiary; the amount of investment in the project agreed to be made by the business  
188 beneficiary; the timetable for the completion of the project and new jobs created; the prevailing average  
189 wage; and the average wage (excluding fringe benefits) agreed to be paid in the new jobs.

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

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

205 **§ 2.2-2235.1. Board of directors; members and officers; Chief Executive Officer.**

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

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

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

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

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

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

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

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

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

242 G. A majority of the members shall constitute a quorum for the transaction of the Authority's  
243 business, and no vacancy in the membership shall impair the right of a quorum to exercise the rights  
244 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.

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

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

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

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

D. 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.

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

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

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

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

A. The Board shall establish a *an* Advisory Committee on Business Development and Marketing (the Committee) consisting of ~~nine~~ 10 nonlegislative citizen members representing local or regional economic development entities from each of the regions designated by the Virginia Growth and Opportunity Board in accordance with § 2.2-2486 as follows:

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

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

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

B. 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 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 Administrative and staff support for the~~ Committee shall be provided by the Authority *upon approval of the Chairman of the Board or the Chief Executive Officer*. The Committee shall elect a chairman and vice-chairman from among its membership. A majority of the members shall constitute a quorum.

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

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

A. The Board shall establish ~~a~~ *an* Advisory Committee on International Trade (the 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~~ *nine* nonlegislative citizen members as follows:

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

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

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

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

B. 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 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 Administrative and staff support for the~~ Committee shall be provided by the Authority *upon approval of the Chairman of the Board or the Chief Executive Officer*. The Committee shall elect a chairman and vice-chairman from among its membership. A majority of the members shall constitute a quorum.

C. The 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~~ *upon request of the Board*.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

429 criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the  
430 apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders  
431 other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

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

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

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

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

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

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

489 25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein  
490 personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees

by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title 23.1 is discussed.

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

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

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

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

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

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

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

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

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

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

36. Discussion or consideration by the Brown v. Board of Education Scholarship Committee of information or confidential matters subject to the exclusion in subdivision 3 of § 2.2-3705.4, and 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 meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation, or motion that shall have its substance reasonably identified in the open meeting.

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

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

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

**2. That the provisions of this act amending subsection C of § 2.2-2237.3 of the Code of Virginia regarding the assignment of rights of a political subdivision in certain situations shall apply to all**

614 contracts and memorandums of understanding for the award of economic development incentives  
615 by the Commonwealth, including those that were executed prior to the codification of this act.