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HOUSE BILL NO. 2702

House Amendments in [] — February 4, 1999

A BILL to amend the Code of Virginia by adding in Title 2.1 a chapter numbered 32.3, consisting of sections numbered 2.1-548.53 through 2.1-548.68, and to repeal §§ 2.1-548.29:01, 2.1-548.29:02, and 2.1-548.29:03, relating to the creation of the Virginia Tourism Authority Act.

Patrons—Drake, Abbitt, Albo, Baker, Black, Bryant, Byron, Cantor, Davies, Davis, Devolites, Diamonstein, Griffith, Johnson, Jones, S.C., Katzen, McDonnell, Morgan, Nixon, Phillips, Purkey, Reid, Rust, Ware and Wilkins; Senators: Bolling, Gartlan, Hanger, Hawkins, Miller, K.G., Norment, Saslaw, Stosch, Ticer, Wampler, Watkins and Williams

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 2.1 a chapter numbered 32.3, consisting of sections numbered 2.1-548.53 through 2.1-548.68, as follows:

CHAPTER 32.3.

VIRGINIA TOURISM AUTHORITY ACT.

§ 2.1-248.53. Short title.

This chapter shall be known and may be cited as the Virginia Tourism Authority Act.

§ 2.1-248.54. Legislative findings and purposes.

The General Assembly finds and hereby declares that:

1. There exists in all geographical regions of the Commonwealth a rich plethora of tourist attractions, including cultural, historical, commercial, educational, and recreational activities, locations, and sources of entertainment;

2. Such tourist attractions are of potential interest to millions of people who reside both in and outside the Commonwealth;

3. Promotion of tourism in the Commonwealth is necessary to increase the prosperity of the people of the Commonwealth;

4. A state tourism development authority is therefore necessary to stimulate the tourism segment of the economy by promoting, advertising, and marketing the Commonwealth's many tourist attractions and by coordinating other private and public efforts to do the same; and

5. The film industry is a legitimate and important part of economic development in the Commonwealth.

The General Assembly determines that the creation of an authority for this purpose is in the public interest, serves a public purpose and will promote the health, safety, welfare, convenience or prosperity of the people of the Commonwealth.

§ 2.1-248.55. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Authority" means the Virginia Tourism Authority created by this chapter.

"Board" or "Board of Directors" means the Board of Directors of the Authority.

"Member" means a person currently serving a term on the Board of Directors.

§ 2.1-248.56. Creation of Authority.

The Virginia Tourism Authority is created, with the duties and powers set forth in this chapter, as a public body corporate and as a political subdivision of the Commonwealth. The Authority is hereby constituted a public instrumentality exercising public and essential governmental functions, and the exercise by the Authority of the duties and powers conferred by this chapter shall be deemed and held to be the performance of an essential governmental function of the Commonwealth. The exercise of the powers granted by this chapter shall be in all respects for the benefit of the inhabitants of the Commonwealth and the increase of their commerce and prosperity. The Authority is authorized to do business as the "Virginia Tourism Corporation," and any references in the Code or in any regulations promulgated thereunder that refer to the Virginia Tourism Corporation shall, whenever necessary, be deemed to refer to the Authority.

§ 2.1-248.57. Board of Directors.

A. All powers, rights and duties conferred by this chapter or other provisions of law upon the Authority shall be exercised by a board of directors consisting of the Secretary of Commerce and Trade, the Secretary of Finance, and eleven members appointed by the Governor, subject to confirmation by the General Assembly. The members of the Board appointed by the Governor shall serve terms of [~~four~~ six] years each, except that the original terms of four members appointed by the Governor shall end on

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60 June 30, 2000, the original term of four members appointed by the Governor shall end on June 30,
61 2001, and the terms of three members appointed by the Governor shall end on June 30, 2002, all as
62 designated by the Governor. Any appointment to fill a vacancy on the Board shall be made for the
63 unexpired term of the member whose death, resignation or removal created the vacancy. All members of
64 the Board shall be residents of the Commonwealth. Members may be appointed to successive terms on
65 the Board of Directors. The Governor shall make appointments in such a manner as to ensure the
66 widest possible geographical representation of all parts of the Commonwealth. Each member of the
67 Board shall be reimbursed for his or her reasonable expenses incurred in attendance at meetings or
68 when otherwise engaged in the business of the Authority and shall be compensated at the rate provided
69 in § 2.1-20.3 for each day or portion thereof in which the member is engaged in the business of the
70 Authority.

71 B. The Governor shall designate one member of the Board as chairman [~~who shall be the chief~~
72 ~~executive officer of the Authority~~]. The Board may elect one member as vice-chairman, who shall
73 exercise the powers of chairman in the absence of the chairman or as directed by the chairman. The
74 Secretary of Commerce and Trade and the Secretary of Finance shall not be eligible to serve as
75 chairman or vice-chairman.

76 C. Meetings of the Board shall be held at the call of the chairman or of any [~~four~~ six] members.
77 [~~Five~~ seven] members of the Board shall constitute a quorum for the transaction of the business of
78 the Authority. An act of the majority of the members of the Board present at any regular or special
79 meeting at which a quorum is present shall be an act of the Board of Directors. No vacancy on the
80 Board shall impair the right of the majority of a quorum of the members of the Board to exercise all
81 the rights and perform all the duties of the Authority.

82 D. Notwithstanding the provisions of any other law, no officer or employee of the Commonwealth
83 shall be deemed to have forfeited or shall have forfeited his or her office or employment by reason of
84 acceptance of membership on the Board or by providing service to the Authority.

85 § 2.1-248.58. Appointment and duties of Executive Director.

86 The Governor shall appoint an Executive Director of the Authority, who [shall serve as president
87 and chief executive officer of the Authority. The Executive Director] shall report to, but not be a
88 member of, the Board of Directors. The Governor shall set the salary and other compensation of the
89 Executive Director, and shall approve any changes in the Executive Director's salary or compensation.
90 The Executive Director shall serve as the ex officio secretary of the Board and shall administer, manage
91 and direct the affairs and activities of the Authority in accordance with the policies and under the
92 control and direction of the Board of Directors. He shall attend meetings of the Board of Directors,
93 shall keep a record of the proceedings of the Board and shall maintain and be custodian of all books,
94 documents and papers of the Authority, the minute book of the Authority and its official seal. He may
95 cause copies to be made of all minutes and other records and documents of the Authority and may give
96 certificates under seal of the Authority to the effect that the copies are true copies, and all persons
97 dealing with the Authority may rely upon the certificates. He shall also perform other duties as
98 instructed by the Board in carrying out the purposes of this chapter. The Executive Director shall
99 employ or retain such agents or employees subordinate to him as may be necessary to fulfill the duties
100 of the Authority conferred upon the Executive Director, subject to the Board's approval. Employees of
101 the Authority, including the Executive Director, shall be eligible for membership in the Virginia
102 Retirement System and participation in all of the health and related insurance and other benefits,
103 including premium conversion and flexible benefits, available to state employees as provided by law.

104 § 2.1-248.59. Powers of Authority.

105 The Authority is granted all powers necessary or appropriate to carry out and to effectuate its
106 purposes, including the following:

107 1. Have perpetual succession as a public body corporate and as a political subdivision of the
108 Commonwealth;

109 2. Adopt, amend and repeal bylaws, rules and regulations, not inconsistent with this chapter for the
110 administration and regulation of its affairs, to carry into effect the powers and purposes of the Authority
111 and the conduct of its business;

112 3. Sue and be sued in its own name;

113 4. Have an official seal and alter it at will although the failure to affix this seal shall not affect the
114 validity of any instrument executed on behalf of the Authority;

115 5. Maintain an office at any place within the Commonwealth which it designates;

116 6. Make and execute contracts and all other instruments and agreements necessary or convenient for
117 the performance of its duties and the exercise of its powers and functions under this chapter;

118 7. Acquire real or personal property, or any interest therein, by purchase, exchange, gift, assignment,
119 transfer, foreclosure, lease or otherwise, including rights or easements, and hold, manage, operate or
120 improve such property;

121 8. Sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part

of its properties and assets;

9. Employ officers, employees, agents, advisers and consultants, including without limitation, financial advisers and other technical advisers and public accountants and, the provisions of any other law to the contrary notwithstanding, to determine their duties and compensation without the approval of any other agency or instrumentality;

10. Procure insurance, in amounts and from insurers of its choice, or provide self-insurance, against any loss, cost, or expense in connection with its property, assets or activities, including insurance or self-insurance against liability for its acts or the acts of its directors, employees or agents and for the indemnification of the members of its Board and its employees and agents;

11. Receive and accept from any source aid, grants and contributions of money, property, labor or other things of value to be held, used and applied to carry out the purposes of this chapter subject to the conditions upon which the aid, grants or contributions are made;

12. Enter into agreements with any department, agency or instrumentality of the United States, the Commonwealth, the District of Columbia or any [~~adjoining~~] state for purposes consistent with its mission;

13. Establish and revise, amend and repeal, and charge and collect, fees and charges in connection with any activities or services of the Authority;

14. Make grants to local governments with any funds of the Authority available for this purpose;

15. Develop policies and procedures generally applicable to the procurement of goods, services, and construction based on competitive principles;

16. Issue periodicals and carry and charge for advertising therein;

17. Raise money in the corporate, nonprofit, and nonstate communities to finance the Authority's activities;

18. Support and encourage each locality to foster its own tourism development programs;

19. Enter into agreements with public or private entities that provide participating funding to establish and operate tourism centers, funded jointly by the entity and the Authority, as shall be determined by the Executive Director, and as approved by the Authority;

20. Encourage, stimulate, and support tourism in the Commonwealth by promoting, marketing, and advertising the Commonwealth's many tourist attractions and locations;

21. Encourage, stimulate and support the film industry in the Commonwealth;

22. Do all things necessary or proper to administer and manage the Cooperative Tourism Advertising Fund and the Governor's Motion Picture Opportunity Fund; and

23. Do any act necessary or convenient to the exercise of the powers granted or reasonably implied by this chapter and not otherwise inconsistent with state law.

§ 2.1-248.60. Cooperative Tourism Advertising Fund

A. There is hereby established the Cooperative Tourism Advertising Fund (Co-op Fund) for the purpose of encouraging, stimulating, and supporting the tourism segment of the economy of the Commonwealth and the direct and indirect benefits that flow from the success of such industry. To create the public-private partnership envisioned by such Co-op Fund, the Co-op Fund shall be established out of the sums appropriated from time to time by the General Assembly for the purpose of matching private funds to be used for the promotion, marketing, and advertising of the Commonwealth's many tourist attractions and locations. Proposals shall be eligible for matching [grant] funds under this section only if they promote, market and advertise locations or destinations solely within the territorial limits of the Commonwealth. The Co-op Fund shall be administered and managed by the Authority and expended pursuant to a formula contained in the general appropriation act.

B. In the event more than one person seeks to take advantage of the benefits conferred by this section and the Co-op Fund is insufficient to accommodate all such requests, the matching formula shall be adjusted, to the extent practicable, to afford each request for which there is a valid public purpose an equitable share.

C. All persons seeking to receive or qualify for such matching funds shall apply to the Authority in August of the year preceding the fiscal year for which funds are sought, and to the extent the Governor concurs in such funding request, it shall be reflected in the Governor's Budget Bill filed pursuant to § 2.1-399. Such application shall be set forth in the applicant's proposals in detail. The Authority shall develop guidelines setting forth the criteria it will weigh in considering such applications; such guidelines may indicate a preference for proposals submitted by nonprofit organizations.

§ 2.1-248.61. Governor's Motion Picture Opportunity Fund.

There is hereby created a Governor's Motion Picture Opportunity Fund to be used, in the sole discretion of the Governor, to support the film and video industries in Virginia by providing the means for filling the financial gap between private financing and the private equity for production companies and producers who make their projects in the Commonwealth using Virginia employees, goods and services. The Fund shall consist of any moneys appropriated to it in the general appropriations act or

183 revenue from any other source. The Fund shall be established on the books of the Comptroller and any
184 moneys remaining in the Fund at the end of a biennium shall not revert to the general fund but shall
185 remain in the Fund. Interest earned on the Fund shall be credited to the Fund.

186 The Fund shall be used by the Governor to assist production companies or producers that meet the
187 eligibility requirements set forth in the guidelines. The Virginia Tourism Authority shall assist the
188 Governor in the development of guidelines for the use of the Fund. The guidelines should include
189 provisions for geographic diversity and a cap on the amount of money available for a certain project.
190 The types of projects eligible for consideration will be feature films, children's programs, documentaries,
191 television series or other television programs designed to fit a thirty-minute or longer format slot.
192 Projects not eligible are industrial, corporate or commercial projects, education programs not intended
193 for rebroadcast, adult films, music videos and news shows or reports.

194 § 2.1-248.62. Grants from Commonwealth.

195 The Commonwealth may make grants of money or property to the Authority for the purpose of
196 enabling it to carry out its corporate purposes and for the exercise of its powers. This section shall not
197 be construed to limit any other power the Commonwealth may have to make grants to the Authority.

198 § 2.1-248.63. Exemptions.

199 The provisions of the Virginia Public Procurement Act (§ 11-35 et seq.) and the Virginia Personnel
200 Act (§ 2.1-110 et seq.) shall not apply to the Authority.

201 § 2.1-248.64. Exemption from taxation.

202 As set forth in § 2.1-248.56, the Authority will be performing an essential governmental function in
203 the exercise of the powers conferred upon it by this chapter. The Authority shall not be required to pay
204 any taxes or assessments upon any project or any property or upon any operations of the Authority or
205 the income therefrom. Agents, lessees, sublessees, or users of tangible personal property owned by or
206 leased to the Authority also shall not be required to pay any sales or use tax upon such property or the
207 revenue derived therefrom.

208 § 2.1-248.65. Deposit of money; expenditures; security for deposits.

209 A. All money of the Authority, except as otherwise authorized by law or this chapter, shall be
210 deposited in accounts in banks or trust companies organized under the laws of the Commonwealth or in
211 national banking associations located in Virginia or in savings institutions located in Virginia organized
212 under the laws of the Commonwealth or the United States. The money in these accounts shall be paid
213 by check signed by the Executive Director or any other officer or employee designated by the Authority.
214 All deposits of money shall, if required by the Authority, be secured in a manner determined by the
215 Authority to be prudent, and all banks, trust companies and savings institutions are authorized to give
216 security for the deposits.

217 B. Funds of the Authority not needed for immediate use or disbursement, including any funds held in
218 reserve, may be invested in (i) obligations or securities which are considered lawful investments for
219 fiduciaries, both individual and corporate, as set forth in § 26-40, (ii) bankers' acceptances, or (iii)
220 repurchase agreements, reverse repurchase agreements, rate guarantee or investment agreements or
221 other similar banking arrangements.

222 § 2.1-248.66. Forms of accounts and records; annual reports; audit.

223 The Authority shall maintain accounts and records showing the receipt and disbursement of funds
224 from whatever source derived in such form as the Auditor of Public Accounts prescribes. Such accounts
225 and records shall correspond as nearly as possible to accounts and records maintained by corporate
226 enterprises. The Authority shall, following the close of each fiscal year, submit an annual report of its
227 activities for the preceding year to the Governor. The Clerk of each House of the General Assembly may
228 receive a copy of the report by making a request for it to the chairman of the Board of Directors. Each
229 report shall set forth a complete operating and financial statement for the Authority during the fiscal
230 year it covers. [~~An independent certified public accountant or the Auditor of Public Accounts shall~~
231 ~~perform an audit of the books and accounts of the Authority at least once in each fiscal year~~ The
232 accounts of the Authority shall be audited annually by the Auditor of Public Accounts, or his legally
233 authorized representatives, and the costs of such audits shall be borne by the Authority.]

234 § 2.1-248.67. Sovereign immunity.

235 No provisions of this chapter nor act of the Authority, including the procurement of insurance or
236 self-insurance, shall be deemed a waiver of any sovereign immunity to which the Authority or its
237 directors, officers, employees, or agents are otherwise entitled.

238 § 2.1-248.68. Liberal construction of chapter.

239 The provisions of this chapter shall be liberally construed to the end that its beneficial purposes may
240 be effectuated. No proceedings, notice or approval shall be required for the issuance of any bonds of
241 the Authority or any instruments or the security thereof, except as provided in this chapter. [~~Insofar~~
242 ~~as the provisions of this chapter are inconsistent with the provisions of any other law, general, special~~
243 ~~or local, the provisions of this chapter shall control.~~]

244 2. That §§ 2.1-548.29:01, 2.1-548.29:02, and 2.1-548.29:03 of the Code of Virginia are repealed.