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SENATE BILL NO. 1574

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations
on February 15, 2017)

(Patron Prior to Substitute—Senator Ruff)

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

Be it enacted by the General Assembly of Virginia:

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

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

A. *The Authority shall be governed by a board of directors (the Board) consisting of the Secretary of Commerce and Trade and the Staff Directors of the House Committee on Appropriations and the Senate Committee on Finance, or their designees, serving as ex officio, voting members, and eight members to be appointed as follows:*

1. *Four nonlegislative citizen members appointed by the Governor, one of whom shall be a member of the Virginia Growth and Opportunity Board and shall serve as an ex officio, voting member;*

2. *Three nonlegislative citizen members appointed by the Speaker of the House of Delegates; and*

3. *One nonlegislative citizen member appointed by the Senate Committee on Rules.*

B. *Each of the nonlegislative citizen members appointed by the Governor, the Speaker of the House of Delegates, and the Senate Committee on Rules shall possess expertise in at least one of the following areas: marketing; international commerce; finance or grant administration; state, regional, or local economic development; measuring the effectiveness of incentive programs; law; information technology; transportation; workforce development; or manufacturing.*

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

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

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

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

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

H. *The Board shall appoint the chief executive officer of the Authority, who shall not be a member of the Board, whose title shall be President and Chief Executive Officer and may be referred to as the 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.*

§ 2.2-2236.1. Internal auditor; duties.

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

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

60 Board; and

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

63 B. After review by the Board, a copy of the audit reports required by subsection A shall be submitted
64 to the special subcommittee for economic development of the Joint Legislative Audit and Review
65 Commission.

66 **§ 2.2-2237.1. Board of directors to develop strategic plan for economic development; marketing
67 plan; operational plan; submission.**

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

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

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

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

78 B. The Authority shall report annually on its strategic plan and its progress toward meeting the
79 goals and objectives as stated in the strategic plan to the special subcommittee on economic
80 development of the Joint Legislative Audit and Review Commission. Any modifications to the strategic
81 plan shall be promptly submitted to the special subcommittee on economic development of the Joint
82 Legislative Audit and Review Commission.

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

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

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

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

91 b. Identification of specific marketing activities;

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

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

94 The Authority shall report annually on its marketing plan and its progress toward meeting the goals
95 and objectives as stated in the marketing plan to the special subcommittee on economic development of
96 the Joint Legislative Audit and Review Commission. Any modifications to the marketing plan shall be
97 promptly submitted to the special subcommittee on economic development of the Joint Legislative Audit
98 and Review Commission; and

99 2. An operational plan for carrying out the powers and duties of the Authority. Such plan shall
100 include a process to evaluate the Authority's effectiveness in exercising the powers and duties conferred
101 by this article, including the Authority's ability to work with other state, regional, and local economic
102 development organizations and international trade organizations. The Authority shall report annually on
103 its operational plan and its progress toward meeting the goals and objectives as stated in the
104 operational plan to the special subcommittee on economic development of the Joint Legislative Audit
105 and Review Commission. Any modifications to the operational plan shall be promptly submitted to the
106 special subcommittee on economic development of the Joint Legislative Audit and Review Commission.

107 **§ 2.2-2237.2. Office of the Attorney General to provide instruction to Board.**

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

111 **§ 2.2-2237.3. Division of Incentives.**

112 A. Within the Authority shall be created a Division of Incentives that shall be responsible for
113 reviewing, vetting, tracking, managing, and coordinating the economic development incentives offered by
114 the Commonwealth and each locality for each approved project.

115 B. No project that includes an offer of economic development incentives by the Commonwealth,
116 including grants or loans from the Commonwealth's Development Opportunity Fund, shall be approved
117 by the Governor until (i) the Division of Incentives has undertaken appropriate due diligence regarding
118 the proposed project and the Board has certified that the proposed incentives to be offered are
119 appropriate based on the investment and job creation anticipated to be generated by the project and (ii)
120 when required by § 30-310, the MEI Project Approval Commission has endorsed the award of the
121 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 if the business beneficiary fails to make the required investments or create the required number of jobs.

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 the Secretary of Commerce and Trade and the Staff Directors of the House Committee on Appropriations and the Senate Committee on Finance, 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 redisclosed to other members of the Board in accordance with the provisions of subdivision C 2 of § 60.2-114.

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

A. The Board shall establish an Advisory Committee on Business Development and Marketing (the Advisory Committee) consisting of nine nonlegislative citizen members representing 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;

2. Three nonlegislative citizen members appointed by the Speaker of the House of Delegates; and

3. Two nonlegislative citizen members appointed by the Senate Committee on Rules.

After the initial staggering of terms, nonlegislative citizen members shall be appointed for a term of four years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All members may be reappointed. Members appointed to the Advisory Committee shall serve without compensation but shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Staffing of the Advisory Committee shall be provided by the Authority. The Advisory Committee shall elect a chairman and vice-chairman from among its membership. A majority of the members shall constitute a quorum.

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

§ 2.2-2239.2. Advisory Committee on International Trade.

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

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

2. Three nonlegislative citizen members possessing experience or expertise in international trade or trade promotion appointed by the Speaker of the House of Delegates; and

3. Two nonlegislative citizen members possessing experience or expertise in international trade or trade promotion appointed by the Senate Committee on Rules.

After the initial staggering of terms, nonlegislative citizen members shall be appointed for a term of four years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All members may be reappointed. Members appointed to the Advisory Committee shall serve without compensation but shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Staffing of the Advisory Committee shall be provided by the Authority. The Advisory Committee shall elect a chairman and vice-chairman from among its

183 *membership. A majority of the members shall constitute a quorum.*

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

186 **§ 58.1-3122.3. Commissioners to provide certain information to the Virginia Economic**
187 **Development Partnership Authority; confidentiality of such information.**

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

193 *B. Any tax information provided to the Authority under this section shall be confidential and shall*
194 *not be divulged by the Authority. Any tax information so provided shall be used by the Authority solely*
195 *for the purpose of verifying capital investment claims of those businesses that have received incentive*
196 *awards.*

197 **§ 60.2-114. Records and reports.**

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

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

218 *C. Notwithstanding the provisions of subsection A, the Commission shall, upon written request,*
219 *furnish any:*

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

225 *2. The Virginia Economic Development Partnership Authority such information as it may require to*
226 *facilitate the administration and enforcement by the Authority of performance agreements with*
227 *businesses that have received incentive awards. Any information provided to the Authority under this*
228 *subdivision shall be confidential pursuant to 20 C.F.R. Part 603 and shall only be disclosed to members*
229 *of the Authority who are public officials or employees of the Authority for the performance of their*
230 *official duties. No public official or employee shall redisclose any confidential information obtained*
231 *pursuant to this subdivision to nonlegislative citizen members of the Authority or to the public. Any*
232 *information so provided shall be used by the Authority solely for the purpose of verifying employment*
233 *and wage claims of those businesses that have received incentive awards.*

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

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

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

240 **3. That the terms of the persons currently serving as members of the board of directors of the**
241 **Virginia Economic Development Partnership Authority shall expire on July 1, 2017.**

242 **4. That the initial appointments of the board of directors of the Virginia Economic Development**
243 **Partnership Authority made in accordance with the provisions of this act shall be staggered as**
244 **follows: (i) of the three nonlegislative citizen members appointed by the Governor, one shall be**

245 appointed for a term of two years, one shall be appointed for a term of four years, and one shall
246 be appointed for a term of six years; (ii) of the three nonlegislative citizen members appointed by
247 the Speaker of the House of Delegates, one shall be appointed for a term of two years, one shall be
248 appointed for a term of four years, and one shall be appointed for a term of six years; and (iii)
249 the nonlegislative citizen member appointed by the Senate Committee on Rules shall be appointed
250 for a term of four years. Thereafter, the terms of members of the board of directors shall be six
251 years.

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

255 6. That the initial appointments of the Advisory Committee on Business Development and
256 Marketing made in accordance with the provisions of this act shall be staggered as follows: (i) of
257 the four nonlegislative citizen members appointed by the Governor, one shall be appointed for a
258 term of two years, two shall be appointed for terms of three years, and one shall be appointed for
259 a term of four years; (ii) of the three nonlegislative citizen members appointed by the Speaker of
260 the House of Delegates, two shall be appointed for terms of three years and one shall be appointed
261 for a term of four years; and (iii) of the two nonlegislative citizen members appointed by the
262 Senate Committee on Rules, one shall be appointed for a term of three years and one shall be
263 appointed for a term of four years. Thereafter, the terms of members of the Advisory Committee
264 on Business Development and Marketing shall be four years.

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