

SUBCOMMITTEE: COMMERCE, AGRICULTURE, NATURAL RESOURCES &

HOUSE BILL NO. 770

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on/for \_\_\_\_\_

on \_\_\_\_\_)

(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.

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

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

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

54 been awarded to such counties and cities shall be made available for awards in the next five fiscal years'  
55 period.

56 D. Funds may be used for public and private utility extension or capacity development on and off  
57 site; public and private installation, extension, or capacity development of high-speed or broadband  
58 Internet access, whether on or off site; road, rail, or other transportation access costs beyond the funding  
59 capability of existing programs; site acquisition; grading, drainage, paving, and any other activity required  
60 to prepare a site for construction; construction or build-out of publicly or privately owned buildings;  
61 training; or grants or loans to an industrial development authority, housing and redevelopment authority,  
62 or other political subdivision for purposes directly relating to any of the foregoing. However, in no case  
63 shall funds from the Fund be used, directly or indirectly, to pay or guarantee the payment for any rental,  
64 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 § 30-  
71 309.

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 number  
78 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  
80 if 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 statewide  
84 average unemployment rate for that calendar year or (ii) with a poverty rate for the most recent calendar  
85 year for which such data is available that exceeds the statewide average poverty rate for that year, a grant  
86 or loan may be awarded from the Fund pursuant to subdivision 1 a if the project involves a minimum  
87 private investment of \$2.5 million and creates at least 25 new jobs for which the average wage, excluding  
88 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 rate  
93 for that year, a grant or loan may be awarded from the Fund pursuant to such subdivisions if the project  
94 involves a minimum private investment of \$1.5 million and creates at least 15 new jobs for which the  
95 average wage, excluding fringe benefits, is no less than 85 percent of the prevailing average wage.

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

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

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

126 b. The contract between the political subdivision and the business beneficiary shall provide in  
127 detail (i) the fair market value of all funds that the Commonwealth has committed to provide, (ii) the fair  
128 market value of all matching funds (or in-kind match) that the political subdivision has agreed to provide,  
129 (iii) how funds committed by the Commonwealth (including but not limited to funds from the Fund  
130 committed by the Governor) and funds that the political subdivision has agreed to provide are to be spent,  
131 (iv) the minimum private investment to be made and the number of new jobs to be created agreed to by  
132 the business beneficiary, (v) the average wage (excluding fringe benefits) agreed to be paid in the new

133 jobs, (vi) the prevailing average wage, and (vii) the formula, means, or processes agreed to be used for  
134 measuring compliance with the minimum private investment and new jobs requirements, including  
135 consideration of any layoffs instituted by the business beneficiary over the course of the period covered  
136 by the contract.

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

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

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

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

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

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

174 G. Within the 30 days immediately following June 30 and December 30 of each year, the Governor  
175 shall provide a report to the Chairmen of the House Committees on Appropriations and Finance and the  
176 Senate Committee on Finance which shall include, but is not limited to, the following information  
177 regarding grants and loans awarded from the Fund during the immediately preceding six-month period for  
178 economic development projects: the name of the company that is the business beneficiary of the grant or  
179 loan and the type of business in which it engages; the location (county, city, or town) of the project; the  
180 amount of the grant or loan committed from the Fund and the amount of all other funds committed by the  
181 Commonwealth from other sources and the purpose for which such grants, loans, or other funds will be  
182 used; the amount of all moneys or funds agreed to be provided by political subdivisions and the purposes  
183 for which they will be used; the number of new jobs agreed to be created by the business beneficiary; the  
184 amount of investment in the project agreed to be made by the business beneficiary; the timetable for the  
185 completion of the project and new jobs created; the prevailing average wage; and the average wage  
186 (excluding fringe benefits) agreed to be paid in the new jobs.

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

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

202 **§ 2.2-2235.1. Board of directors; members and officers; Chief Executive Officer.**

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

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

210 B. 1. Each of the nonlegislative citizen members appointed by the Governor and the Joint Rules  
211 Committee shall possess expertise in at least one of the following areas: marketing; international  
212 commerce; finance or grant administration; state, regional, or local economic development; measuring the  
213 effectiveness of incentive programs; law; information technology; transportation; workforce



214 development; manufacturing; biotechnology; cybersecurity; defense; energy; or any other industry  
215 identified in the comprehensive economic development policy developed pursuant to § 2.2-205.

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

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

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

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

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

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

240 perform all duties of the Authority. The meetings of the Board shall be held at least quarterly or at the call  
241 of the chairman.

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

246 **§ 2.2-2237.3. Division of Incentives.**

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

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

258 C. Any contract or memorandum of understanding for the award of economic development  
259 incentives by the Commonwealth shall set forth the investment and job creation requirements for the  
260 payment of the incentive and shall include a stipulation that the business beneficiary of the incentives shall  
261 be liable for the repayment of all or a portion of the incentives to the Commonwealth if the business  
262 beneficiary fails to make the required investments or create the required number of jobs. If it is determined  
263 that a business beneficiary is liable for the repayment of all or a portion of an economic development  
264 incentive awarded by the ~~Board~~ Commonwealth, the Board may direct the Office of the Attorney General  
265 to enforce the provisions of the contract or memorandum of understanding regarding the repayment. The  
266 Board may direct the Office of the Attorney General to enforce any such contract or memorandum of

267 understanding for any project that is considered open or active by the Board, and about which the business  
268 beneficiary has not received notice that its investment and job creation requirements have been met,  
269 regardless of the date of the contract or memorandum of understanding. Notwithstanding the provisions  
270 of § 2.2-518, the Office of the Attorney General shall not be entitled to retain any of the incentives  
271 recovered.

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

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

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

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

292 **§ 2.2-2239.1. Committee on Business Development and Marketing.**

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

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

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

301 3. One nonlegislative citizen member appointed by the Board.

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

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

312 **§ 2.2-2239.2. Committee on International Trade.**

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

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

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

321 3. One nonlegislative citizen member possessing experience or expertise in international trade or  
322 trade promotion appointed by the Board.

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

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

335 C. The Committee shall advise the Board on all matters relating to international trade and trade  
336 promotion and shall make such recommendations as it may deem desirable.

337 **§ 2.2-3711. Closed meetings authorized for certain limited purposes.**

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

339 1. Discussion, consideration, or interviews of prospective candidates for employment; assignment,  
340 appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public  
341 officers, appointees, or employees of any public body; and evaluation of performance of departments or  
342 schools of public institutions of higher education where such evaluation will necessarily involve  
343 discussion of the performance of specific individuals. Any teacher shall be permitted to be present during  
344 a closed meeting in which there is a discussion or consideration of a disciplinary matter that involves the  
345 teacher and some student and the student involved in the matter is present, provided the teacher makes a

346 written request to be present to the presiding officer of the appropriate board. Nothing in this subdivision,  
347 however, shall be construed to authorize a closed meeting by a local governing body or an elected school  
348 board to discuss compensation matters that affect the membership of such body or board collectively.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

452           22. Those portions of meetings of the board of visitors of the University of Virginia or the Eastern  
453 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any

454 persons to whom management responsibilities for the University of Virginia Medical Center or Eastern  
455 Virginia Medical School, as the case may be, have been delegated, in which there is discussed proprietary,  
456 business-related information pertaining to the operations of the University of Virginia Medical Center or  
457 Eastern Virginia Medical School, as the case may be, including business development or marketing  
458 strategies and activities with existing or future joint venturers, partners, or other parties with whom the  
459 University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed,  
460 or forms, any arrangement for the delivery of health care, if disclosure of such information would  
461 adversely affect the competitive position of the Medical Center or Eastern Virginia Medical School, as  
462 the case may be.

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

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

475 25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein  
476 personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees by  
477 or on behalf of individuals who have requested information about, applied for, or entered into prepaid  
478 tuition contracts or savings trust account agreements pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title  
479 23.1 is discussed.

480           26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee  
481 created pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336  
482 et seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of wireless E-  
483 911 service.

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

490           28. Discussion or consideration of information subject to the exclusion in subdivision 11 of § 2.2-  
491 3705.6 by a responsible public entity or an affected locality or public entity, as those terms are defined in  
492 § 33.2-1800, or any independent review panel appointed to review information and advise the responsible  
493 public entity concerning such records.

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

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

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

505           32. Discussion or consideration of confidential proprietary information and trade secrets developed  
506 and held by a local public body providing certain telecommunication services or cable television services

507 and subject to the exclusion in subdivision 18 of § 2.2-3705.6. However, the exemption provided by this  
508 subdivision shall not apply to any authority created pursuant to the BVU Authority Act (§ 15.2-7200 et  
509 seq.).

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

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

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

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

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

526 38. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting  
527 pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26,  
528 by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College  
529 Savings Plan acting pursuant to § 23.1-706, or by the Virginia College Savings Plan's Investment Advisory  
530 Committee appointed pursuant to § 23.1-702 of information subject to the exclusion in subdivision 24 of  
531 § 2.2-3705.7.

532 39. Discussion or consideration of information subject to the exclusion in subdivision 3 of § 2.2-  
533 3705.6 related to economic development.

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

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

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

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

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

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

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

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

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

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

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

576 51. Those portions of meetings of the subcommittee of the Board of the Virginia Economic  
577 Development Partnership Authority established pursuant to subsection F of § 2.2-2237.3 to review and  
578 discuss information received from the Virginia Employment Commission pursuant to subdivision C 2 of  
579 § 60.2-114.

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

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

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

590 E. This section shall not be construed to (i) require the disclosure of any contract between the  
591 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§  
592 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to  
593 the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered  
594 to issue industrial revenue bonds by general or special law, to identify a business or industry to which  
595 subdivision A 5 applies. However, such business or industry shall be identified as a matter of public record  
596 at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such bonds.

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