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SENATE BILL NO. 628

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws
on March 1, 2000)

(Patrons Prior to Substitute—Senators Miller, Y.B and Maxwell [SB 742])

A BILL to amend and reenact §§ 2.1-707, 2.1-708, and 63.1-133.49 of the Code of Virginia, to amend the Code of Virginia by adding in Title 63.1 a chapter numbered 6.6, consisting of sections numbered 63.1-133.56 through 63.1-133.59, and to repeal §§ 2.1-710.1, 2.1-710.2, and 2.1-710.3 of Chapter 42 of Title 2.1, relating to the Economic and Employment Improvement Program for Disadvantaged Persons.

Be it enacted by the General Assembly of Virginia:

1. That §§2.1-707, 2.1-708, and 63.1-133.49 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Title 63.1 a chapter numbered 6.6, consisting of sections numbered 63.1-133.56 through 63.1-133.59, as follows:

§ 2.1-707. Duties of Department.

The Department shall perform the following duties under the direction and control of its Executive Director:

1. Provide such technical assistance as may at the discretion of the Executive Director be requisite for the proper implementation and maintenance of programs afforded under the Act.

2. Monitor performance of those entities which by the terms of the agreement specified in Section 103 (b) (1) of the Act were or may hereafter be selected to administer the job training plans developed and approved by the Governor in accordance with the Act and monitor or require monitoring of contractors including those of the said entities. As used herein, the term "entities" means any private industry council or other entity or entities performing the functions of administrative entity and grant recipient, either or both, as these terms are used in the Act.

3. Audit or cause audits to be made of the entities specified in subdivision 2 of this section and require auditing of their contractors in accordance with the requirements of the Act and applicable regulations and as sound administration may require at the discretion of the Department.

4. Develop and implement such systems or procedures as may be required or permitted by the Act or such as otherwise may be desirable or convenient for the efficient, fiscally sound and successful administration of the Act in the Commonwealth, including, without limitation, performance standards and reporting.

5. ~~Develop and implement, in coordination with the State Board for Community Colleges, the state-funded Economic and Employment Improvement Program for Disadvantaged Persons.~~

6. 5. Perform such other or further duties as the Governor may prescribe to assist him in carrying out his duties as prescribed by the Act.

§ 2.1-708. Powers of Department.

The Department shall have the following powers to be exercised under the direction and control of the Executive Director:

1. Accept funds from the United States government allocated to the Commonwealth pursuant to the Act. The Department is empowered to comply with such conditions and execute such agreements as may be necessary or appropriate in connection with the acceptance of such funds.

2. Allocate funds received from the United States government to carry out the various programs authorized by the Act in accordance with the requirements of the Act, applicable regulations of the United States Department of Labor and the policy of the Department.

3. Adopt and enforce by appropriate action such policies and regulations having the force of law consistent with the Act as may be necessary or appropriate to carry out the purposes of this chapter and the duties imposed upon the Governor by the Act to the end that job training programs afforded by the Act be carried out efficiently in conformity with the requirements of the Act and that program abuse and misexpenditure of funds received from the United States be prevented.

4. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties under this chapter, including, but not limited to, contracts with the United States, agencies and governmental subdivisions of the Commonwealth and agencies of adjoining states and the District of Columbia which perform duties similar to the Department.

5. Employ such personnel as may be necessary to carry out the purposes of this chapter.

6. Provide such review at state level of grievances, audit related issues, and such other matters delegated to the Department by the Governor as may be required by the Act and applicable regulations of the United States Department of Labor. Such review shall be conducted solely in accordance with the requirements of the Act, the applicable regulations and such internal procedures as may be adopted by

the Department. Decisions of the Department pursuant hereto shall be reviewable solely in accordance with the terms of the Act and the regulations. The provisions of Article 4 (§ 9-6.14:15 et seq.) of the Administrative Process Act shall have no application to such decisions.

7. Promulgate regulations for the implementation of the state-funded Economic and Employment Improvement Program for Disadvantaged Persons, and the awarding of state grants for funding approved projects.

8. Receive such gifts, donations, grants, bequests, and other funds on behalf of and for use by the Economic and Employment Improvement Program for Disadvantaged Persons.

9. 7. Do all acts necessary or appropriate to carry out the purposes of this chapter.

CHAPTER 6.6.

ECONOMIC AND EMPLOYMENT IMPROVEMENT PROGRAM FOR DISADVANTAGED PERSONS.

§ 63.1-133.56. *Economic and Employment Improvement Program for Disadvantaged Persons transferred and re-established; program administered by the Department of Social Services.*

A. With such funds as may be appropriated for this purpose and from such gifts, donations, grants, bequests, and other funds as may be received on its behalf by the Department of Social Services, to facilitate the continuation of existing projects funded pursuant to the provisions of this chapter, to improve the employability of and provide assistance to disadvantaged persons through education and skills training, and to extend the eligibility for education and job training services under the Economic and Employment Improvement Program for Disadvantaged Persons (the Program) to certain hard-to-employ persons, the Program is hereby transferred from the Governor's Employment and Training Department and re-established under the Department of Social Services. The Governor's Employment and Training Department shall assist the Department of Social Services as may be necessary to provide for the smooth transition of Program responsibilities between the agencies.

B. The Program shall be administered by the Department of Social Services. The Program shall comply with state and federal laws and regulations governing workforce training, welfare reform, adult literacy and education, and vocational and technical education programs and shall be consistent with existing state apprenticeship programs.

§ 63.1-133.57. *Program awards administered by Department; promulgation of regulations.*

The Department shall promulgate regulations for the implementation of the Program. Such regulations shall provide for (i) the continuation and enforcement of regulations in effect on July 1, 1999, under which eligible projects were approved for grant awards by the Governor's Employment and Training Department; (ii) the designation of projects to receive grants awards in accordance with the recommendations of the Grant Awards Committee, pursuant to § 63.1-133.58; and (iii) additional provisions establishing eligibility criteria for projects designed to serve certain hard-to-employ persons as provided in clauses (iv) through (vii) of subsection C of § 63.133.58.

§ 63.1-133.58. *Grant Awards Committee re-established; eligible projects; criteria for award of grants.*

A. There is hereby re-established the Economic and Employment Improvement Program for Disadvantaged Persons Grant Awards Committee, which shall be composed of nine members designated by the relevant agency heads as follows: (i) one representative of the State Board for Community Colleges who shall have expertise in grant writing and review; (ii) one representative of the Department of Education, who shall have expertise in the administration and delivery of vocational and technical education programs and services administered by and through the public schools, and the delivery of adult literacy and education services; (iii) one representative of the Virginia Employment Commission, who shall have expertise in the administration and evaluation of workforce training programs; (iv) one representative of the Department of Labor and Industry who shall have expertise in labor and employment law; (v) one representative of the Department of Social Services who shall be knowledgeable of the requirements of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P. L. 104-193), as amended, and the programs included in the From Welfare to Work: The Virginia Independence Program, as defined in Chapter 6.5 (§ 63.1-133.41 et seq.) of Title 63.1; (vi) one representative of local social services or welfare departments who shall have expertise and experience in assisting chronically unemployed and hard-to-employ persons, designated by the Commissioner of Social Services; (vii) one representative of the Department of Corrections, who shall have expertise in the education and job training programs offered to incarcerated persons, and the Department's transition and job placement programs that are available to persons leaving the correctional system; (viii) one representative of a local workforce investment board, designated by the Commissioner of the Virginia Employment Commission; and (ix) one representative of four-year institutions of higher education whose service areas and student populations are comprised of disproportionately high percentages of disadvantaged persons, designated by the Chairman of the State Council of Higher Education.

The Commissioner of Social Services shall provide written notification to the respective agency heads of the re-establishment of the Economic and Employment Improvement Program for Disadvantaged Persons Grant Awards Committee, and shall request that the respective agency head designate the

appropriate persons to represent the agency on the Awards Committee.

B. Upon the appropriation of funds for this purpose and from such gifts, donations, grants, bequests, and other funds as may be received by the Department of Social Services on behalf of the Program, the Committee shall issue a request for proposals for grant projects designed to improve the employability of and provide assistance to disadvantaged persons through education and skills training. The Committee shall review each grant application, make grant awards in accordance with the eligibility criteria established in this section, and evaluate the effectiveness of the educational and skills training services delivered by the funded projects. The Committee shall report the results of its evaluation annually, beginning July 1, 2001, to the governing boards of agencies represented on the Committee, to the Governor, and to the General Assembly.

C. On and after July 1, 2000, the Program shall consist of no more than ten grant projects, including projects awarded grants by the Governor's Employment and Training Department and in existence on July 1, 1999, located in regions throughout the Commonwealth to provide equal geographical distribution of such projects. Priority for awarding such grants shall be given to projects designed to serve persons who are (i) historically underrepresented in Virginia institutions of higher education, and in management and at administrative levels in the business community; (ii) residing in counties, cities, and towns with high local stress indicators and in economically depressed regions of the Commonwealth; (iii) disproportionately represented in the workforce in minimum wage jobs and occupations requiring minimum education, training, and skills; (iv) ineligible to continue to receive welfare assistance under state and federal welfare reform laws; (v) eligible to participate in the programs included in the From Welfare to Work: The Virginia Independence Program, as defined in Chapter 6.5 (§ 63.1-133.41 et seq.) of Title 63.1, and especially those eligible to participate in job skills training programs, pursuant to subsection E of § 63.1-133.49; (vi) returning to the community from state and federal correctional institutions; (vii) chronically unemployed or hard-to-employ; (viii) displaced by technological advances in industry; or (ix) subject to any combination thereof. Education and job training programs shall be designed to enable individuals to move from minimum wage jobs to higher-salaried occupations and employment opportunities and to pursue careers and professions. Grants for all projects shall be awarded on a competitive basis to applicants responding to requests for proposals.

Eligible projects awarded grants on May 1, 1999, and in existence on July 1, 1999, shall be eligible for grant renewal upon the satisfactory evaluation of the project by the Committee. The renewal of such grants shall be awarded by September 1, 2000. Awards to eligible projects designed to serve certain hard-to-employ persons as provided in clauses (iv) through (vii) of subsection C of §63.133.58 shall be awarded by December 1, 2000.

D. Eligible projects shall (i) satisfy the criteria for receiving awards, pursuant to subsection C of this section; (ii) provide educational programs, job training opportunities, or other support services to improve the employability of persons ineligible to continue to receive welfare assistance, or who are eligible to participate in the programs included in the From Welfare to Work: The Virginia Independence Program, Chapter 6.5 (§ 63.1-133.41 et seq.) of Title 63.1, and especially those eligible to participate in job skills training programs, pursuant to subsection E of §63.1-133.49, or populations experiencing high rates of unemployment or underemployment; (iii) provide training and education reflective of current and projected workforce needs in the Commonwealth that will enable persons to move from minimum wage jobs to higher-salaried occupations, careers, and professions; (iv) provide coordinated delivery of services, such as community-business partnerships and community outreach programs through the schools or departments of business at two-year and four-year public and private institutions of higher education; (v) include a component to evaluate the effectiveness of the delivery of educational and job skills training services; and (vi) encourage mentoring through partnerships between institutions of higher education, corporations, and small businesses. Grant recipients may work collaboratively, upon request, to provide approved service delivery. Participants in the Economic and Employment Improvement Program for Disadvantaged Persons that are not participating in the Virginia Initiative for Employment Not Welfare Program shall be required to work a minimum of eight hours per week in paid employment during the Program.

§ 63.1-133.49. Virginia Initiative for Employment Not Welfare (VIEW).

A. The Department shall establish and administer the Virginia Initiative for Employment Not Welfare (VIEW) to reduce long-term dependence on welfare, to emphasize personal responsibility and to enhance opportunities for personal initiative and self-sufficiency by promoting the value of work. The Department shall endeavor to develop placements for VIEW participants that will enable participants to develop job skills that are likely to result in independent employment and that take into consideration the proficiency, experience, skills and prior training of a participant.

VIEW shall recognize clearly defined responsibilities and obligations on the part of public assistance recipients and shall include a written agreement of personal responsibility requiring parents to participate

183 in work activities while receiving TANF, earned-income disregards to reduce disincentives to work, and
184 a limit on TANF financial assistance.

185 VIEW shall require all able-bodied recipients of TANF who do not meet an exemption and who are
186 not employed within ninety days of receipt of TANF benefits to participate in a work activity. VIEW
187 shall require eligible TANF recipients to participate in unsubsidized, partially subsidized or fully
188 subsidized employment and enter into an agreement of personal responsibility. If recipients cannot be
189 placed in an unsubsidized or subsidized job, they shall be required to participate in a six-month
190 community work experience placement. Upon completion of the initial six-month work requirement,
191 participants may receive education and training in conjunction with continued work experience to make
192 them more employable.

193 B. To the maximum extent permitted by federal law, and notwithstanding other provisions of
194 Virginia law, the Department and local departments may, through applicable procurement laws and
195 regulations, engage the services of public and private organizations to operate VIEW and to provide
196 services incident to such operation.

197 C. All VIEW participants shall be under the direction and supervision of a case manager.

198 D. The Department shall ensure that participants are assigned to one of the following employment
199 categories in priority order not less than ninety days after TANF eligibility determination:

200 1. Unsubsidized private-sector employment;

201 2. Subsidized employment, as follows:

202 (a) The Department shall conduct a program in accordance with this section and any applicable
203 federal waivers that shall be known as the Full Employment Program (FEP). FEP replaces TANF and
204 food stamp benefits with subsidized employment. Persons not able to find unsubsidized employment
205 who are otherwise eligible for both TANF and food stamp benefits shall participate in FEP unless
206 exempted by this chapter. FEP will assign participants to and subsidize wage-paying private-sector jobs
207 designed to increase the participants' self-sufficiency and improve their competitive position in the work
208 force.

209 (b) The Department shall administer a wage fund which shall be used exclusively to meet the
210 necessary expenditures of FEP. Funds to operate FEP, drawn from funds appropriated for expenditure by
211 or apportioned to Virginia for operation of the TANF and food stamp programs, shall be deposited in
212 this pool. All payments by the Department to participating employers for FEP participants shall be made
213 from the pool.

214 (c) Participants in FEP shall be placed in full-time employment when appropriate and shall be paid
215 by the employer at an hourly rate not less than the federal or state minimum wage, whichever is higher.
216 For each participant hour worked, the Department shall reimburse the employer the amount of the
217 federal or state minimum wage and costs up to the available amount of the participant's combined value
218 of TANF and food stamps. At no point shall a participant's spendable income received from wages and
219 tax credits be less than the value of TANF and food stamps received prior to the work placement.

220 (d) Every employer subject to the Virginia unemployment insurance tax shall be eligible for
221 assignment of FEP participants, but no employer shall be required to utilize such participants. Employers
222 shall ensure that jobs made available to FEP participants are in conformity with § 3304 (a) (5) of the
223 Federal Unemployment Tax Act. FEP participants cannot be used to displace regular workers.

224 (e) FEP employers shall:

225 (i) Endeavor to make FEP placements positive learning and training experiences;

226 (ii) Provide on-the-job training to the degree necessary for the participants to perform their duties;

227 (iii) Pay wages to participants at the same rate that they are paid to other employees performing the
228 same type of work and having similar experience and employment tenure;

229 (iv) Provide sick leave, holiday and vacation benefits to participants to the same extent and on the
230 same basis that they are provided to other employees performing the same type of work and having
231 similar employment experience and tenure;

232 (v) Maintain health, safety and working conditions at or above levels generally acceptable in the
233 industry and no less than those in which other employees perform the same type of work;

234 (vi) Provide workers' compensation coverage for participants;

235 (vii) Encourage volunteer mentors from among their other employees to assist participants in
236 becoming oriented to work and the workplace; and

237 (viii) Sign an agreement with the local department outlining the employer requirements to participate
238 in FEP. All agreements shall include notice of the employer's obligation to repay FEP reimbursements in
239 the event the employer violates Program rules.

240 (f) As a condition of FEP participation, employers shall be prohibited from discriminating against
241 any person, including program participants, on the basis of race, color, sex, national origin, religion, age,
242 or disability;

243 3. Part-time or temporary employment; or

244 4. Community work experience, as follows:

(a) The Department and local departments shall expand the community work experience program authorized under the Job Opportunity and Basic Skills Training Program (JOBS) to include job placement in community work experience programs which serve a useful public purpose as provided in § 482 (f) of the Social Security Act.

(b) The Department and local departments shall work with other state, regional and local agencies and governments in developing job placements. Placements shall be selected to provide skills and serve a public function. Program participants shall not displace regular workers.

(c) The number of hours per week for participants shall be determined by combining the total dollar amount of TANF and food stamps and dividing by the minimum wage with a maximum of a work week of thirty-two hours, of which up to eight hours of employment-related education and training may substitute for work experience employment.

E. Notwithstanding the provisions of subsections A and D, if a local department determines that a VIEW participant is in need of job skills and would benefit from immediate job skills training, it may, with the participant's consent, exempt the participant from job search requirements and place the participant in a vocational educational program targeted to skills required for particular employment opportunities in the locality if the participant meets two or more of the criteria specified in this subsection. Eligible participants include those with problems related to obtaining and retaining employment, such as participants (i) with less than a high school education, (ii) whose reading or math skills are at or below the eighth grade level, (iii) who have not retained a job for a period of at least six months during the prior two years, or (iv) who are in a treatment program for a substance abuse problem or are receiving services through a family violence treatment program. The vocational educational program shall be for a minimum of thirty hours per week. Prior to placing the VIEW participant in the vocational educational program, the local department shall have a memorandum of understanding with an employer that such participant will be placed, if qualified and the employer has an opening, in a job with the employer at the conclusion of the program. The VIEW participant shall be required to work an average of eight hours per week during the vocational educational program in part-time or temporary employment or community work experience. The VIEW participant may continue in the vocational educational program for as long as the local department determines he is progressing satisfactorily and to the extent permitted by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193), as amended.

F. Notwithstanding the provisions of subsections A and D, persons eligible to participate in the programs included in the *From Welfare to Work: The Virginia Independence Program*, as defined in Chapter 6.5 (§ 63.1-133.41 et seq.) of this title, and those persons eligible to participate in job skills training programs, pursuant to subsection E of this section, shall also be eligible to participate in approved projects established through the *Economic and Employment Improvement Program for Disadvantaged Persons* of Chapter 6.6 (§63.1-133.56 et seq.) of Title 63.1.

F.G. Participants may be re-evaluated after a period determined by the local department and re-assigned to another work component. In addition, the number of hours worked may be reduced by the local department so that a participant may complete additional training and/or education to further his employability.

G.H. Local departments shall be authorized to sanction participants up to the full amount of the TANF grant and food stamps allotment for noncompliance.

H.I. VIEW participants shall not be assigned to projects which require that they travel unreasonable distances from their homes or remain away from their homes overnight without their consent.

Any injury to a VIEW participant by accident arising out of and in the course of community work experience shall be covered by the participant's existing Medicaid coverage. If a community work experience participant is unable to work due to such an accident, his status shall be reviewed to determine whether he is eligible for an exemption from the limitation on TANF financial assistance.

A community work experience participant who becomes incapacitated for thirty days or more shall be eligible for TANF financial assistance for the duration of the incapacity, if otherwise eligible.

The State Board shall promulgate regulations providing for the accrual of paid sick leave or other equivalent mechanism for community work experience participants.

2. That §§ 2.1-710.1, 2.1-710.2, and 2.1-710.3 of Chapter 42 of Title 2.1 of the Code of Virginia are repealed.